PUBLICATIONS OF THE UNIVERSITY OF MANCHESTER

HISTORICAL SERIES
No. LX

CORNWALLIS IN BENGAL

Published by the University of Manchester at
THE UNIVERSITY PRESS (H. M. McKechnie, M.A., Secretary)
23 Lime Grove, Oxford Road, MANCHESTER

CORNWALLIS IN BENGAL

THE ADMINISTRATIVE AND JUDICIAL REFORMS OF LORD CORNWALLIS IN BENGAL, TOGETHER WITH ACCOUNTS OF THE COMMERCIAL EXPANSION OF THE EAST INDIA COMPANY, 1786–1793, AND OF THE FOUNDATION OF PENANG, 1786–1793

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MANCHESTER UNIVERSITY PRESS

1931

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MADE IN ENGLAND

PREFACE

THE Governor-Generalship of Lord Cornwallis in effect links up the careers of India's greatest proconsuls, Warren Hastings and the Marquess Wellesley. This short period (1786–93) is of considerable importance in the history of British India. A permanent settlement was made of the land revenues of Bengal. English influence in India was strengthened by the defeat of Tipu, ruler of Mysore, the East India Company's most formidable enemy amongst the Native Powers. The Indian Civil Service was created. Penang, the first of the Straits Settlements, was founded. The first English Embassy was sent to China, and the Company steadily increased its trade with the Far East.

The sub-title indicates the precise scope of this book. Cornwallis is best known as the author of the Permanent Settlement, but this subject has been deliberately ignored. It is too vast to be treated in a short monograph; it has already been frequently and exhaustively dealt with, and History has long since recorded its unfavourable judgment Moreover, Cornwallis, who carried it through, was only indirectly responsible for it; the India Act of 1784 had ordered it to be made, and Cornwallis received his instructions from the Court of Directors at the beginning of his term of office The war with Mysore, too, has received sufficient attention, in any case, Cornwallis checked rather than destroyed the power of Tipu Sultan, and his work had to be done all over again, a few years later, by Wellesley.

But Cornwallis's achievements in the sphere of internal reform need no such sweeping qualifications. It is primarily for these that he deserves a place in the history of British India. Though they are by far the most valuable part of his work, they have generally been either neglected, misunderstood, or treated very insufficiently. They were not of a spectacular nature. The older historians, like Gleig and James Mill, did less than justice

to the author of the great Code of 1793. Seton-Karr, in his short *Life* of Cornwallis, written in 1914 for the "Rulers of India" Series, dismissed the subject in comparatively few pages, and the late Sir George Forrest's two volumes of State Papers of the Governor-General are of very little value.

Cornwallis created an efficient civil service on the foundations which Hastings had laboriously prepared, introducing standards of efficiency, regularity and probity which had been unknown before. As Mr. J. C. Sinha has shown in his *Economic Annals of Bengal*, Cornwallis was the founder of the modern Indian currency. He caused the British flag to be hoisted on the Andaman Islands, and founded Penang, the acquisition of which settlement was the first effective challenge to the century-long supremacy of the Dutch in the Far East. It provided His Majesty's ships of war with a safe and commodious naval station at a short distance from the coasts of Coromandel and Bengal, and gave English merchantmen a first-rate port of call and refreshment on their way to and from the China seas.

In 1786, too, steps were taken to open up trade with Assam. In 1789 Cornwallis ordered inquiries to be made into the possibility of establishing a settlement in the Persian Gulf which would increase the Company's trade with Persia and Arabia. During these years the China trade steadily expanded, and in 1792 Lord Macartney was sent as the first English Ambassador to the Court of Peking. In the same year a Commercial Treaty was negotiated with the Gurkhas who had conquered Nepal, and Colonel Fitzpatrick was sent there on a special mission. The conquest of Arakan by the King of Ava, completed just before Cornwallis's arrival in India, brought Burma for the first time into serious political relationship with the Government of Bengal; and the resulting frontier troubles, combined with commercial disputes at Rangoon, led directly to the First Burmese War of 1824 and to the British annexation of the maritime Provinces of Arakan and Tenasserim.

Since they are unconnected with the subject of Bengal administration, with which this volume mainly deals, the short chapters relating to the East India Company's trade in the time of Cornwallis, and to the foundation of Penang, are confined to Appendixes.

It is a pleasant duty to acknowledge the helpfulness and courtesy of the officials of the India Office Library, the Public

Record Office, the British Museum, the Bengal Secretariat, Calcutta, the Imperial Record Department of the Government of India, Calcutta, and of the Record Department at Pondichéry, upon whose services I have laid heavy toll. And in this connection I should particularly like to mention Mr. A. F. M. Abdul Ali, the Keeper of the Records of the Government of India; and Mr. Dutt, of the Bengal Secretariat. To the University of Rangoon I am also very grateful for financial assistance whilst conducting my researches in India. Mr. Francis Edwards, 83 High Street, Marylebone, was kind enough to allow me to make use of the Melville Papers which he purchased at Sotheby's. Mr. H. M. McKechnie, as usual, has been generous with his services in seeing this book through the press.

A. ASPINALL.

THE UNIVERSITY,
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(*a*) The Cornwallis Correspondence.
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The Warren Hastings Papers (Additional Manuscripts, Vols. 28973–29236; 39871–39904).

IV. The French Records at Pondichéry.

V. The Melville Papers.

The Papers of Henry Dundas, Lord Melville, were sold at Sotheby's in four portions, in 1924, 1926, 1927 and 1929. Mr. Francis Edwards, 83 High Street, Marylebone, purchased a large collection of miscellaneous correspondence relating to

India, but some of the manuscripts have since then been sold. The papers which have been found particularly useful are as follows:

(*a*) Lord Cornwallis's private letters to Dundas.
(*b*) Sir John Macpherson's private letters to Dundas.
(*c*) Sir John Shore's private letters to Dundas.
(*d*) A few copies of Dundas's letters to Cornwallis.

Some of these are printed in Ross, *Cornwallis Correspondence*.

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CHAPTER I

ADMINISTRATIVE REFORMS

1. The Situation of the East India Company in 1786

FOR a quarter of a century the East India Company had been not merely a great trading Company but also a great territorial power, ruling over a population more than double that of England and Wales. The Bombay Presidency, the least important of the three, then consisted of little more than the town itself and the neighbouring island of Salsette; the Madras Presidency was more extensive but was of little value compared to Bengal, whose revenues, amounting to between five and six million pounds a year, were more than five times the combined revenues of the other Presidencies.[1] Operating with a capital of £3,200,000, which was increased to £4,000,000 in 1786 and to £5,000,000 in 1789,[2] employing over 80,000 tons of shipping navigated by 7,000 seamen,[3] the Company carried on a valuable and extensive trade, principally with India and China. Every year it sent home from India cargoes costing on an average nearly £1,900,000[4] and selling for almost £2,000,000.[5] The

[1] The figures for the year 1787–8 are as follows:

	Actual Revenues.	*Actual Charges.*
	£	£
Bengal . . .	5,182,711	3,046,776
Madras . . .	997,280	1,247,281
Bombay . . .	131,026	440,841
	£6,311,017	£4,734,898

(*Parl. Hist.*, xxviii, 189.)

"It will require many years and a succession of excellent Governors, before Madras will pay its own expenses and furnish a moderate investment," wrote Cornwallis to Dundas on 7 November 1789. "And I doubt whether it can ever happen, if the Nabob is permitted to oppress and ruin the country in the manner he does at present." (Melville Papers.)

[2] *Parl. Hist.*, xxvi, 152; xxviii, 293.

[3] *Ibid.*, xxx, 661.

[4] Anderson, *A General View of the . . . Affairs of the E.I.C.*, App. VIII. The average *prime* cost was just over £1,000,000, freight charges £267,000, customs duties £485,000, insurance and other charges £120 000 (*ibid*).

[5] *Ibid.*

average cost of the India and China goods together amounted to nearly £4,100,000 [1] and they sold for £4,660,000.[2] An Army of 70,000 men, sepoys and Europeans, maintained the peace and security of the Company's Indian territories.[3] In 1787 Dundas, the President of the Board of Control,[4] declared, in the course of his annual parliamentary statement of the Company's finances, that the British possessions in India ought to be considered "as the brightest jewel in the British diadem."[5] Valuable, however, as was the connection between Great Britain and India, the British Government had ceased to derive any direct pecuniary advantage from that connection, although the Bengal revenues contributed about £600,000 a year to the cost of the Investment, or cargoes sent home from India, and £1,000,000 a year more was remitted to London from India, chiefly in the form of bills drawn on the Court of Directors, by private individuals.[6] The legend that the Company poured from India a perpetual stream of wealth into the coffers of the British Treasury, died hard; as late as 1808 a French writer (M. Anquetil) declared that India was "la mine qui fournit aux dépenses de l'Angleterre en Europe"[7]; and Philip Francis, who had been a member of the Governor-General's Council in the time of Warren Hastings, compared the administration of the Company's territories with the treatment which the Asiatic provinces of the Roman Empire received at the hands of Rome before Augustus removed the worst abuses in the

[1] The average *prime* cost was about £3,560,000, freight charges £722,000, customs duties £544,000, insurance and other charges £280,000.

[2] *Ibid.*

[3] By 1789 the army had been reduced to about 40,000 (*Shore Corr.*, i, 164).

[4] Pitt's India Act of 1784 had created a new Government Department, the Board of Control, consisting of six unpaid Commissioners for the Affairs of India; of these, two were always to be the Chancellor of the Exchequer and a Secretary of State, and the other four, members of the Privy Council. The Secretary of State was to preside; in his absence, the Chancellor of the Exchequer; in *his* absence, the senior privy councillor. All the Company's Despatches to and from India, except on commercial matters, had to be submitted to the Board, and in the case of emergency the Board could transmit its own orders to India, through the Secret Committee of the Court of Directors. So in effect the Directors carried out the orders of the Government in military, political and revenue matters, and were left in unfettered control only of commercial business and of patronage, subject to one restriction: the Board of Control, though not allowed to appoint any of the Company's servants, had the right to recall them. Henry Dundas, afterwards Viscount Melville, was the senior member of the Board of Control from 1784 to 1801, and in 1793 the salaried office of President was created for him.

[5] *Parl. Hist.*, xxvi, 1085.

[6] *Ibid.*, xxx, 661.

[7] *Edin. Review*, Jan. 1810, p. 371; April 1810, p. 137.

provincial administration.[1] The truth is that India, contrary to popular belief, was not an unparalleled and inexhaustible source of riches to Great Britain, and England ceased to draw tribute from her in 1773.

The Company had for long excited criticism in England because the purchase of its cargoes necessitated a large-scale exportation of silver, and because English manufacturers derived so little benefit from its commerce. The tropical climate made English woollen goods almost unsaleable, and much of the broadcloth which, by the terms of the Company's Charter, had to be annually sent out to India, was left to rot in the warehouses.[2] The revolution in the cotton industry was only just beginning, and as yet Lancashire cotton goods could not compete with the cheap hand-woven Indian cloth. The monopoly of trade with the East Indies which the Company enjoyed had also created jealousy and discontent, but although, whilst Cornwallis was Governor-General, meetings of protest were beginning to be held in the manufacturing towns,[3] it was not until Napoleon's Continental System caused most of the regular European markets to be closed to British merchants, that the trading classes began seriously to demand compensation for the loss of their continental trade by the freeing of the East India and China trade; and when the Company's Charter was renewed in 1793, Pitt, the Prime Minister, was able to say that the Bill, in spite of its importance, had passed through the House of Commons with a quietness unexampled in the annals of Parliament.[4] The time was soon to come when, owing to the expensive wars which had to be fought against the Indian and European Powers during the French Revolutionary and Napoleonic era, the Company declared (in 1800) that the continuance of its monopoly was not only necessary, but indispensable, to save it from bankruptcy.

In 1786, three years had elapsed since the close of that war with

[1] *Parl. Hist.*, xxx, 688. "In the time of Cicero the Romans were treating their provinces in Asia as we have treated ours. They taxed with one hand and monopolized with the other. They demanded from their subjects an exorbitant revenue, which they made it impossible for them to pay, first, by engrossing the produce of the lands, in character of proprietor, and then by appropriating the trade and industry of the people in quality of merchant."

[2] *Ibid.*, xxx, 698. *See* Appendix I.

[3] *Parl. Hist.*, xxx, 678.

[4] *Ibid.*, xxx, 914. Cp. Dundas's remark in a letter to Cornwallis, 23 Oct. 1793: "The arrangements for the renewal of the Company's Charter have been made, and received the sanction of the Legislature with an unanimity almost unexampled." (Melville Papers.)

the Indian Powers aided by the French and the Dutch, which formed part of a greater maritime and colonial conflict between Great Britain and the Bourbon coalition, fought out in America and on the seas. The Peace Treaty of Versailles (3 September 1783) marked the failure of the French to smash the power of the English in India, whose position was never again so seriously to be menaced by any European nation. For the later struggle during the French Revolutionary and Napoleonic period was not the climax but the epilogue of the Anglo-French conflict for supremacy in the East. Expelled from the mainland, the French could do little except prey on English commerce in the East Indies and carry on futile intrigues with the ruler of Mysore. The issue had already been decided during the war of 1778–83, and in spite of the successes of the French in America and the heroic efforts of the great admiral Suffren in the East Indies, the terms of the Peace Treaty were punctuated for the French by failure if not humiliation. They could have achieved victory only by means of a coalition with the strongest Indian Powers, Mysore, the Marathas, and the Nizam of Hyderabad. The skilful diplomacy of Warren Hastings, the Governor-General of Bengal, broke up the most powerful confederacy ever formed against the British in India, and the unstable Tipu of Mysore alone remained in alliance with the French. The French Government at home had fatally blundered in not sending a powerful navy and military expedition to India in the first years of the war, whilst again, the incompetence and wilful negligence of their admiral, D'Orves, the unworthy predecessor of the great Suffren, caused them to let slip a unique opportunity of bringing off at Madras in 1781 a capitulation as disastrous as Yorktown, which might have followed from a skilful co-operation of the French fleet with the land-forces of Hyder Ali, the ruler of Mysore. All South India might have been lost to the English, and the dreams of Dupleix realized. When De Bussy arrived in 1782 with reinforcements from home, the situation was already hopeless, and he was persistently dogged by ill-luck until news arrived of the conclusion of peace in Europe. By the thirteenth, fourteenth and fifteenth articles of the definitive Treaty [1] the French recovered their factories which had fallen into English hands, but since these settlements could no longer be fortified they were so useless that the French seriously contemplated the transference of their head-

[1] *Parl. Hist.*, xxiii, 1165.

quarters from Pondichéry to Rangoon. De Bussy's weighty objections to this fantastic scheme, however, prevented its execution. He informed the Maréchal de Castries, the French Minister of Marine, that Burma was in an anarchic condition, cursed by frequent civil wars between the Burmans and the subject Talaings. The acquisition of Rangoon, the only convenient spot, was not practicable, he said; it could be taken and held only by large forces. He pointed out that the English had already tried to gain a footing in Burma, but their efforts had failed. De Bussy hoped that the Dutch, their allies in the recent war, might be induced to cede the splendid port of Trincomali, on the east coast of Ceylon, the finest harbour on the west side of the Bay of Bengal.[1] "We ought not to be blind to the fact that the English are very powerful in India, and their power is daily increasing; they have troops, money and strong places everywhere. The fear which they have inspired in all Indians is extreme, and the event of so sudden a peace between our two nations has made such an impression that it leaves us almost without a hope of making allies for a new war."[2]

The English, therefore, had emerged safely from the war, but a severe strain had been put upon the finances of the East India Company. Its bonds bore 18 per cent. discount at Calcutta, 40 per cent. at Madras, and even 50 per cent. at Bombay.[3] Whereas the rate of interest payable on its debt at home was 5 per cent., it was 8 per cent. in Bengal and Madras, and 9⅛ per cent. in Bombay.[4] In September 1785 the Court of Directors decided to transfer a portion of the Indian debt to London; the Bengal Government, receiving subscriptions of the debts owed in the Province, were able to grant bills on the Court of Directors only at the very unfavourable rate of exchange of 1*s.* 8*d.* to the rupee.[5] Exclusive of its capital of £3,200,000 the Company, at the beginning of 1786, was burdened with a home debt of over £11,800,000 and an Indian debt of over £9,770,000.[6] So one of the most important tasks thrust upon the new Governor-General was to restore the Company's credit in India by introducing the strictest economy into the administration, and to increase the Company's prosperity by taking measures to expand its trade.

[1] Pondichéry Records. De Bussy to De Castries, 4 Aug. 1784.
[2] *Ibid.*, De Bussy to De Castries, 28 Sept. 1783.
[3] G. Anderson, *A General View of the Variations which have been made in the Affairs of the East India Company*, p. 36.
[4] *Ibid.*, p. 38. [5] *Ibid.*, p. 38. [6] *Ibid.*, p. 58.

Cornwallis, the eldest son of the fifth Baron Cornwallis, was born in 1738, and educated at Eton. Before he was eighteen he decided to enter the army, and after obtaining a commission in the Grenadier Guards he went to Turin to study at the Military Academy. The Seven Years War had broken out, and in 1758 he rejoined his regiment, which had been ordered to Germany to reinforce Prince Ferdinand of Brunswick's army. In the following year he was present at the Battle of Minden, but returned to England shortly afterwards on being promoted to the rank of captain in another regiment. In 1760 he became a Member of Parliament for the family borough of Eye, in Suffolk. Two years later he succeeded to his father's peerage and took his seat in the House of Lords. For several years he took no active part in politics, but usually voted with the Whig Peers, and accepted a Household appointment in 1765 when Rockingham formed his short-lived Whig ministry. His friend Shelburne induced him to serve under the Duke of Grafton, who succeeded Rockingham in the summer of 1766, and he took the post of chief justice in eyre south of the Trent. Although, upon Shelburne's resignation in 1769 Cornwallis resigned both his offices in England, he took the office of Vice-Treasurer of Ireland, which he retained until 1771, although he was strongly opposed to the American policy of Lord North, who became Prime Minister in 1770. When the American War began, Cornwallis was compelled by a strong sense of duty to take the command of a division, although for more than ten years he had steadily opposed all the measures of the Government which had provoked the rebellion. He was given the local rank of lieutenant-general, and embarked in February 1776. Under Sir William Howe, the Commander-in-Chief, he took part in the capture of New York, and overran the State of New Jersey. In the following year he defeated the rebels at Brandywine and occupied Philadelphia. In 1778 he became second-in-command to Sir Henry Clinton, who had taken Howe's place. In 1780 he won some striking successes in the Southern States, but in October 1781, as is well known, he was forced to capitulate to Washington and the French, after having warned Clinton, who sent no reinforcements from New York, that the force at his disposal was too weak to hold Yorktown.[1]

[1] For Cornwallis's early career, see Ross, *Cornwallis Correspondence*, vol. i; and the *D.N.B.* For a recent account of his campaigns in America, see *The Cambridge History of the British Empire*, vol. i, ch. xxiv, by C. T. Atkinson.

The perilous situation of the British possessions in India at this time, when the Government was looking round for a successor to Warren Hastings, made it desirable that a military man should be appointed. Consequently, Cornwallis was approached by Lord Shelburne, the Prime Minister, in 1782. But he had not yet been released from his parole, and, moreover, considered that the Regulating Act of 1773 unduly limited the Governor-General's power over his Councillors and the authority of the Bengal Government over that of the subordinate Governments of Madras and Bombay. A change of ministry put an end to the negotiation, and for more than three years Cornwallis remained unemployed, with the exception of an unimportant mission to the King of Prussia.

In 1786, however, after much solicitation, Pitt prevailed upon him to go to India, after Lord Macartney, who had recently resigned the post of Governor of Madras, had refused the offer. Cornwallis declared that it meant the exchange of " a life of ease and content " for a life in which he would have to encounter " all the plagues and miseries of command and public station." It was not until the Government had promised to introduce legislation to unite the posts of Governor-General and Commander-in-Chief of the Army, and to increase his authority in Council that, " with grief of heart," Cornwallis agreed to go for a period of four years only.[1] Hastings's power over the four members of the Supreme Council at Fort William had been limited to a casting vote when the votes, including his own, happened to be equal. Pitt's India Act of 1784 reduced the number of Councillors to three, so that the Governor-General's second vote was sufficient to ensure the adoption of his policy whenever he had the support of a single member. The Act of 1786, however, enabled Cornwallis to override at will the opinions of the Councillors, and prevented the possibility arising of his being rendered impotent as Hastings had been in 1775 by Francis, Clavering, and Monson.[2]

Cornwallis was the first Governor-General to be appointed without having had any previous experience in India. There could be no question, therefore, of his being jealously regarded by the members of the Supreme Council and other senior servants

[1] *Ross*, i, 208.

[2] 26 Geo. III, cap. xvi. Similar powers were conferred on the Governors of Fort St. George and Bombay.

as a favoured equal suddenly raised from their level and invested with great power. Moreover, he possessed that which neither of his predecessors had enjoyed: the complete confidence of the Government at home; and their inflexible support ensured him freedom from those petty but vexatious intrigues of Directors and politicians in England, which had so sorely tried the fine temper of Warren Hastings and undermined his authority. Of a rank far surpassing that of his colleagues, and holding high ideals of public service, Cornwallis could be expected to command the respect of all his subordinates and to govern Bengal with that degree of vigour and efficiency necessary for the revival of internal prosperity and the restoration of sound, upright administration. With a military reputation which Yorktown had not destroyed, he could be expected to strengthen the position and prestige of the English in India.

He left home at the beginning of May 1786; his ship, the *Swallow* packet, carried back to Bengal the man who was destined to be the Earl's successor. John Shore was already the Company's expert on revenue matters, and the ablest of its servants on the Bengal establishment; and he had been nominated by the Court of Directors to fill the first vacancy on the Governor-General's Council. "After a prosperous and expeditious voyage," [1] Madras was reached on 22 August in uncomfortably hot weather; and at eleven o'clock at night on Monday, 11 September, the *Swallow* anchored in the Hugli opposite Fort William. Had he come up this section of the river in daylight Cornwallis would doubtless have appreciated the fine appearance of its banks, ornamented here and there with fine country villas, and covered with a rich green verdure. He was too late that night, also, to see the impressively massive outworks and bastions of the Fort, which in those days rose straight from the water's edge.

He landed at daybreak the following morning, and the guns of the Fort fired a salute in his honour. A party of the bodyguard conducted him into the Fort, where, in an elegantly furnished apartment, he was welcomed by John Macpherson, who had officiated as Governor-General since Hastings's departure in February 1785. A large company of guests sat down to a sumptuous breakfast, but, it was said, only the members of Macpherson's family were introduced to his Lordship. A meeting of the

[1] *Ross*, i, 218.

Council followed in the Council Chamber, and the Earl's Commission was read, Macpherson, Stables, and Stuart being present.[1] The oaths of allegiance, of Governor-General, and of a Justice of the Peace, were administered, whereupon Cornwallis took his seat at the head of the Council Board. Arrangements were made for the reading of the terms of the Commission to the garrison troops in Calcutta and throughout the Provinces, under a discharge of nineteen pieces of artillery and three volleys of small arms; and for the proclamation detailing these events to be read the following day in various parts of the town by the Sheriff, attended by a military guard.[2]

Macpherson, who deeply resented his supersession, and who, through his friends in London, even tried to make out that it was illegal, at first endeavoured to make things uncomfortable for Cornwallis.[3] It was Macpherson's intention to reserve Government House, which stood near the west corner of Old Court House Street and Esplanade Row, for his own use, and to give Cornwallis apartments in the Fort, but his plans were quickly defeated when the Earl proposed to go at once to Government House.[4] At the next meeting of the Council, however, Macpherson in a formal Minute took the opportunity of welcoming his Lordship, and volunteered his cheerful and active co-operation in the task of governing.

From the Council as it was then constituted, however, Cornwallis was to derive little assistance. Sloper returned to England a few weeks later, a discredited and disappointed man. John Stables, a man of much finer character but of second-rate capacity, also went home in the New Year.[5] Macpherson, who informed Pitt and Dundas that he was utterly at a loss to comprehend why he had been superseded a second time, fell ill "of a nervous fever" on 4 October, and after spending a little time on the river

[1] Lieut.-General Robert Sloper, the retiring Commander-in-Chief, was prevented from attending, by illness.

[2] Bengal Public Cons., 12 Sept. 1786; Bengal Public Letter to Court, 18 Sept. 1786.

[3] *Ross*, i, 326 n. In a letter to Hastings (16 Feb. 1787) Shore too stated that Cornwallis's situation "was uncomfortable on our arrival" (B.M. Add. MSS. 29170, fo. 374). In June 1787 Macpherson's friends or agents in London sent a memorandum to Pitt and Dundas on the subject of his supersession, their point being that two Acts of Parliament laid down that the Governor-General should hold office for five years. Dundas acknowledged the receipt of the memorandum but refused to continue the correspondence. (Melville Papers.)

[4] B.M. Add. MSS. 29170, fo. 270.

[5] Bengal Public Letter to Court, 24 Jan. 1787.

in the hope of recovering his health, took ship for the Cape in December. He did not resign his office, but whether he ever intended to return is doubtful. He arrived at the Cape on 16 May 1787, but, not being allowed to stay there "owing to general orders from the States-General," he sailed for England and landed at Southampton on 10 August.[1] The service, however, sustained no loss by his departure.

Charles Stuart remained a Councillor almost throughout Cornwallis's term of office. In November 1786 the Governor-General described him as "an honourable, good-tempered man, perfectly well disposed to me, and zealous for the public good."[2] Further acquaintance, however, caused Cornwallis to modify his judgment. He wrote in 1788: "Poor Stuart is I think the weakest man I ever met with in any public station. He sits like an automaton when all public business is transacted, and would do more harm in the Government in six months than I have been able to do good in two years. He has no will of his own, and his

[1] Macpherson to Dundas, 10 Aug., 12 Nov. 1786. (Melville Papers.) Macpherson was superseded the first time when Lord Macartney was appointed Governor-General in 1785. Macpherson wrote to Dundas on 10 Aug. 1786: "I have been in doubt whether I ought to write to you or not. As I have done nothing to forfeit the good opinion you once entertained for me, but everything to strengthen it, I am utterly at a loss to comprehend why you and Mr. Pitt should have ordered a second supersession against me in the Bengal Government. You might have written to me upon the subject, if any degree of your former attention to me remained. I have written to Mr. Pitt my sentiments on this subject very freely. I owed it to him to be explicit. . . .

"I see by the Parliamentary Debates that you have paid high compliments to Mr. Hastings's Administration after the year 1782, yet you have not opposed my supersession. I shall have a curious representation to lay before the Minister and other Powers on my return. It will bring to the clearest focus of light all the great movements in the affairs of India at home and abroad since March 1781, for after all that has been said and done, the whole subject appears to me wonderfully misunderstood; and yet it is reducible to mathematical explanation. I thought from the late India Bill, the great lines of which were most salutary, that Mr. Pitt understood the subject perfectly, and the Board of Control completely. I depended upon those considerations, and that it would be a natural result from both, that the only question at home would be whether from the past, and the progress of affairs, after I succeeded to the chief management a change could be made in the Bengal Government, with certainty for the better, because if not, that it would be prudent to let it go on in the career of success it was moving in. The reverse has been done and the issue will determine whether the step Mr. Pitt has taken was a necessary one, or will prove fortunate: at all events it will be definitive in his Asiatic Administration. . . .

"I have made no complaints, nor have I empowered others to complain. I only write to you and others in the Ministry to induce you to do the best that can be done to prevent any great reverse in the affairs of India . . ." (Melville Papers). A number of other letters in the Melville collection throw light on his negotiations for financial compensation, with Dundas and the Court of Directors.

[2] *Ross*, i, 227.

friends are unluckily the worst men in the settlement, but although we are on very good terms, he is too much afraid of me to venture now to take any part in their favour." [1] "I know he does not care one farthing about the public good," he wrote in another letter. "I now go on as well as it is possible to do with two [2] colleagues who are utterly incapable of giving the smallest assistance, and whose interference, even when it is kindly meant, must always tend to obstruct the public business." [3] Cornwallis, however, was better pleased with his conduct whilst he officiated during the Governor-General's absence from Bengal. "Stuart has behaved wonderfully well and with great honour in my absence, but perhaps he might not have been quite so correct if I had quitted the government." [4]

Stables' departure in January 1787 was a piece of good fortune for Cornwallis, for it gave him the assistance at the Council Board of Shore, who was at once put in charge of the Revenue Department. The commonplace abilities of the other Councillors, therefore, compelled the Governor-General to rely on departmental servants for expert knowledge. He was served with extraordinary ability by such men as Charles Grant in commercial matters, Jonathan Duncan in both revenue and judicial matters, and Larkins, who was "outdone by no one in honesty and assiduity, and has besides a useful knowledge in the general business of the settlement." [5] In 1788 Cornwallis urged Dundas to use his influence to procure the appointment of Duncan and Larkins as Councillors as soon as vacancies occurred; and expressed a hope that his "most worthy and valuable friend" Charles Grant, who intended to return to England the following year on account of his children's illness, might be tempted to remain in the service for an extra year or two if offered a seat in Council.[6] "I shall much lament his loss, from the general assistance which I have received from him," wrote Cornwallis on another occasion, "but in the commercial line it is irreparable. If he could be prevailed on to return he would be a most valuable Councillor, but if he determines to stay at home, I should in the event of a future vacancy in Council most earnestly recommend

[1] To Dundas, 4 Nov. 1788. (Melville Papers.)
[2] Speke was the other. [3] To Dundas, 9 Aug. 1790. (Melville Papers.)
[4] To Dundas, 3 Sept. 1791. (Melville Papers.)
[5] Cornwallis to Dundas, 4 Nov. 1788. (Melville Papers.)
[6] *Ibid.*

Larkins, whose public spirit and rigid honesty, though they make him many enemies, keep every one in awe." [1]

2. Reforms in the Commercial Department

In a well-known Chapter in *Sybil*, Disraeli's satirical pen traced the career of a certain John Warren who had begun life as a waiter at one of the fashionable London Clubs, and who, abandoning his humble occupation, went to India and amassed an enormous fortune as a trading adventurer. He then returned home, a "Nabob" and a many-acred country gentleman, prospered in politics as he had prospered in business, purchased many seats in Parliament, and used his borough influence with such adroitness and skill that he was elevated first to a baronetcy, then to an Irish barony; whilst finally the *ci-devant* waiter of the St. James's Street Club acquired an English Earldom and took his seat in the House of Lords.

In the time of Hastings and Cornwallis there were still in India many individuals endeavouring to make themselves "Nabobs," some in the Company's service, others engaged in trade on their own account. When Cornwallis arrived in Bengal, corruption was rampant in every branch of the service: most noticeably so, in the Commercial Department. To their growing indignation the Directors saw what substantial profits its own servants were making on the goods which they sent home on their own account whilst the Company's goods were frequently being sold at a loss. Since the establishment at Calcutta of the Board of Trade in 1774 it had been the practice to procure the Company's Investment (that is, the goods exported from India to England) from European and Indian contractors. But the Directors could not help but notice that the cost of their goods obtained by contract exceeded the cost of those goods which, under the earlier system, had been purchased direct from the native manufacturers to whom advances of money had been made.[2] The Investment had steadily declined both in quantity and quality. There was good reason to believe that the contractors cheated with impunity, for the members of the Board of Trade who might have checked these fraudulent proceedings, were themselves deeply involved, and were extracting a share of the contractors' profits. Many of the contracts were taken up by the senior servants in charge of the

[1] Cornwallis to Dundas, 8 Aug. 1789. (Melville Papers.)
[2] Bengal Secret Letter from Court, 12 April 1786.

Company's factories in the mufassal; and since the Board of Trade consisted of servants who had been promoted from these stations, most of its members had at one time or another been contractors themselves. In their case, however, the term "promotion" was singularly inappropriate, for, as Hickey tells us in his Memoirs, it frequently happened "that men were called from situations of immense emolument to take their seats at the Board of Trade where the avowed allowance was the comparatively pitiful sum of eleven hundred rupees per month." It was, however, a well-known fact to every man in India and to every Director in Leadenhall Street that the members of the Board of Trade made up the deficiency or difference between this awkward *kick upstairs* to a seat at the Board and the lucrative situations they had been taken from, by either themselves having a share or proportion in each contract they granted, or else making the contractor allow them a certain commission for the granting such contracts, a circumstance so public that no member of the Board ever considered it necessary to make a secret of it." [1] The warehouses at Calcutta, declared Cornwallis, were "a sink of corruption and iniquity." [2]

The Court of Directors put the blame for the increasing cost of its Investment on the contractors and the members of the Board of Trade. Whilst the Company's goods brought home by the *Earl of Oxford* in 1784 realized only 1*s.* 10*d.* the current rupee, the goods sent home by the Company's servants on their own account produced on an average 2*s.* 6*d.* per rupee, although, as the Directors observed, "our Investment was provided under every advantage that influence could give it, and the goods for the captains and officers by an unsupported individual." The sales of that cargo gave the Court "the most striking proof either of the grossest frauds or the most shameful neglect" on the part of their servants in Bengal. Between 1783 and 1785 the cost of the Company's raw silk had increased on an average 30 per cent., and in some cases even 60 per cent.[4] The 230 bales provided for the Company by Keighley and sent home in 1784 realized only 1*s.* $1\frac{17}{100}$*d.* per rupee, entailing a loss of over £10,000, but one of the Company's servants, Speke, afterwards a member of the Governor-General's Council, made a profit of over £1,200 on

[1] *Hickey*, iii, 307.
[2] Melville Papers. Cornwallis to Dundas, 14 Aug. 1787.
[3] Bengal Secret Letter from Court, 12 April 1786. *Ibid.*

172 bales which he sent home during that year: and the raw silk sent home privately by the Company's employees realized 2*s.* 1½*d.* and even 2*s.* 6*d.* per rupee.[1] Similarly, at the March sales in 1785 the Company's silk sold at a maximum price of 27*s.* 2*d.* per lb., but private silk fetched 34*s.* 10*d.*[2] The Company's calicoes had increased in price from Rs. 114 in 1783 to Rs. 207 in 1785.[3] The average selling price of its cotton yarns in September 1785 was only 1*s.* 9*d.* per lb., whilst in March 1786 its quality was so bad as to make nearly the whole unsaleable; but yarn sent home privately sold on an average for 11*s.* 8½*d.* per lb.[4] The Company also sustained a loss on its indigo, which should have been a very valuable import. "We are confident," wrote the Directors, "that it might become one of the very best means of remittance to this country and one of the least prejudicial exports from Bengal."[5] At the September sales in 1785 the Company's shellac fetched £4 5*s.*, whilst that in private trade averaged £8 2*s.* 6*d.*, and in the March sales of 1786 the whole of the Company's shellac was rejected owing to its poor quality.[6] In 1785 about seven tons of what was supposed to be saltpetre arrived in London, but when examined it was found to be little better than dirt.[7] Shortly afterwards a further quantity of 483 bags of similar rubbish arrived, and, moreover, the bags themselves were so rotten that they fell to pieces the moment they came to be moved.[8] The Directors angrily complained that they had been grossly imposed upon. "That other nations," they said, "who are only supplied through our medium should be enabled to sell saltpetre cheaper than us is a matter (we must again repeat) of real surprise, and calls upon us and upon yourselves for the most serious investigation. We are convinced that with proper care on your parts such a reduction may be made in the price of this article as to render it a beneficial branch of our commerce."[9] In their Letter dated 27 March 1787 they declared: "We have been informed that persons high in our service, and who have been thought worthy of the most confidential situations, have notwithstanding those flattering marks of our favour, suffered themselves so far un-

[1] Bengal Secret Letter from Court, 12 April 1786.
[2] Bengal Public Letter from Court, 12 April 1786.
[3] Bengal Secret Letter from Court, 12 April 1786.
[4] Bengal Public Letter from Court, 12 April 1786.
[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.*, 27 March 1787.
[8] *Ibid.*, 27 March 1787.
[9] *Ibid.*, 12 April 1786.

gratefully to forget their duty to us, as to enter into commercial connections, the most beneficial [*sic*] possible to our interests; we mean in illicitly remitting to Copenhagen, L'Orient, and other different parts of Europe, the choicest selection of the most valuable and profitable articles that the country affords. We have had pointed out to us by name, persons lately in our service, and some now remaining therein, whose remittances of this nature have turned out to them as far as 3*s*. 9*d*. the rupee, while our own cargoes, from the defect in their quality, the badness of their purchase, and again from our being so effectually shut out of the foreign markets, scarcely net us the rupee at par." [1] Finally the Directors complained that owing to the interested negligence of the Board of Trade in Calcutta, they had received an Investment to the amount of only 66 lakhs, whereas they had had every reason to believe that it would have exceeded 94; and one of their ships had been loaded up with private merchandise whilst goods valued at over 19 lakhs belonging to the Company were left in the export warehouse at the very time of the ship's departure from the Hugli. It was patently obvious that the Company's servants had been systematically and deliberately sacrificing the interests of their employers in order to enrich themselves.

The losses which the Company had been sustaining, however, were not so serious as the plight of the Bengal weavers and manufacturers, the helpless victims of rapacity. They had been compelled to work at utterly unremunerative rates, and, unable to support themselves and their families, many had been driven to leave the country or else to seek other occupations.[3]

Justly indignant with their servants who were so flagrantly violating their contracts, the Directors, in their secret instructions to the Governor-General (12 April 1786) ordered him at once to institute a searching inquiry into the recent conduct of their employees: to file Bills in Equity against such members, past or present, of the Board of Trade, the contractors in raw silk, and the Chiefs of the subordinate Factories in the mufassal, whom his inquiry should lead him to suspect of defrauding the Company; and to suspend all such offenders from the service. If the Supreme Court of Judicature made out decrees against the defendants, they were to be compelled to refund all their

[1] *Ibid.*, 27 March 1787. [2] *Ibid.*
[3] Melville Papers. Cornwallis to Dundas, 14 Aug. 1787.

unauthorized perquisites and to return to England within twelve months. In a subsequent Letter (21 July 1787) the Directors stated that they had already instituted legal proceedings against the members of the late Board of Trade and the contractors, who were then in England. They declared: "We have such strong reasons for believing that scandalous and corrupt practices have prevailed in the provision of this branch of our Investment [raw silk] (and which also leads us to suspect the like in every other branch) that we are determined to obtain for ourselves the most ample redress by an appeal to the laws of our country in order to bring the delinquents to that punishment which offences of so atrocious a nature so loudly call for." [1] In their letter dated 27 March 1787 they went a step further in ordering Cornwallis to dismiss from the service all the members of the late Board of Trade who had been in office in January 1784 and who had since been employed in some other capacity.

Thus at the beginning of his term of office Cornwallis was given the disagreeable task of prosecuting some of the oldest servants in the Company's employ, just as Hastings at the beginning of his Governorship had been ordered to take similar measures of inquiry and punishment. He was fully aware of the difficulty of obtaining legal proofs either of corruption or of negligence. "The customs and prejudices of the natives," he said, "render it difficult in such cases to obtain information from them; and the combination of those servants that have been concerned in such iniquitous transactions may throw insuperable obstacles in the way of investigation into past abuses." [2] Faithfully endeavouring to carry out the orders from home, and determining that no private considerations of their doubtful expediency [3] and justice

[1] Bengal Public Letter from Court, 21 July 1786. [2] *Ross*, i, 233.

[3] Melville Papers. Cornwallis wrote to Dundas on 16 Nov. 1787: "... Severity is not always necessary. I am obliged to say that I think you are going too far at home with your prosecutions and dismissions, and are damping that ardour which I have taken so much pains to excite.

"The indiscriminate prosecution of all the commercial contractors who paid a tax to the Board of Trade is both imprudent and unjust. The first fault was in the Court of Directors, who trusted the Board of Trade for many years with uncontrolled power, and at the same time gave them pitiful salaries, upon which they perfectly well knew they neither did nor could live.

"The Board of Trade were, however, guilty of a very corrupt and criminal breach of trust, and it might be proper to proceed to extremities against them, and perhaps against one or two of the contractors who had evidently made most advantageous bargains.

"But it is impolitic and cruel to involve in the same description of guilt those gentlemen who, from the terms of their contract, were evidently not favoured,

should interfere with what he conceived to be his duty, he at once set secret agents to collect evidence; and though these efforts were only moderately successful, he instructed the Advocate General in February 1787 to file several Bills in Equity against the Company's servants.

The proceedings in the Supreme Court of Judicature had various results.[1] The Bills against several defendants were eventually dropped; other individuals were forced to make restitution.

In the meantime Cornwallis was busily engaged on a revision of the commercial system, and endeavouring to devise a more satisfactory method of procuring the Investment. The Directors, though preferring the system of contractors, left it to the discretion of the Governor-General-in-Council to adopt either that, or the agency system, by which the servants in charge of the Company's Factories in the mufassal arranged prices with, and made advances to, the weavers and manufacturers. After much reflection Cornwallis decided in favour of the latter system. He thought that it tended to improve the quality of the manufactured goods; assuming that the Residents did their work honestly and perseveringly, it was the cheapest way of providing the goods; it was the only method which enabled the Company to ascertain the real cost of its Investment; and it would give employment to the Residents, who would otherwise, because of the new orders prohibiting them from holding contracts, be thrown out of work.[2] This system was therefore adopted, and the Directors professed satisfaction with its results. By the end of 1788 the Governor-General was able to state that abuses had vanished altogether from the Commercial Department, where they had formerly been most numerous and flagrant.[3] "I do

and who executed that contract with honour to themselves and advantage to the Company. Their blame extends no further than that of having merely submitted to the extortion of a tax, which had been for many years established, and without the payment of which no man could possibly obtain a contract. Poor Speke is one of the honestest men living, and I believe is not worth a single rupee, and I suspect that he and Mr. Taylor, and indeed every one mentioned in the list which was sent out by the *Minerva*, except Mr. Charles Grant, would by a literal execution of the late orders be liable to dismission and prosecution.

"I have not yet finally determined how to act in this business, but I think we must take it upon ourselves to suspend the operation of the order, and represent to the Court of Directors the cruelty to some of their best and most deserving servants, and the mischief to the public service which must ensue from carrying it into execution."

[1] See Note A at the end of this chapter.

[2] Bengal Public Cons., 22 Jan. 1787.

[3] Cornwallis to Court, 1 Nov. 1788.

not even conceive there is a single agent employed in it who ventures to state an article beyond the terms actually advanced by him. I therefore regard that Department as clear, and as now furnishing the Investment, intelligently and attentively provided at its genuine and fair cost, without any charge upon it but what has been actually expended and necessary." [1] His Minute of 11 February 1793 on the subject of judicial reforms declared: "The oppressions which were formerly exercised in the provision of the Investment, are at present prevented by the vigilance of Government"; and it was his fervent hope that the Judicial Regulations which he was about to issue would stand as the best security that could be devised against the renewal of abuses.[2]

This reorganization of the work of the Commercial Department was accompanied by the publication of a code of Regulations designed not merely to protect the interests of the Company by defining the duties of the Commercial Residents, but also to safeguard the native weavers and manufacturers and traders from oppression. Drawn up by Charles Grant, who had been appointed a member of the new Board of Trade and given the office of Controller of the Export Warehouse, these Regulations, Cornwallis believed, were admirably calculated to relieve the distresses of the native producers. And he expressed the opinion that his friend Grant, with the assistance of the Controller of the Import Warehouse, would save more money in twelve months than would be required to pay the salaries of the members of the Board of Trade three times over.[3]

3. Revenue and Other Reforms

The fortieth clause of the India Act of 1784 had directed the East India Company to take into immediate consideration the state of the civil and military establishments in all three Presidencies, and to give orders for every practicable retrenchment and reduction of the same. Cornwallis's instructions from the Court of Directors, dated 12 April 1786, required him not merely to prosecute all those servants who had been defrauding the Company, but also to undertake a complete reform of the Bengal services. His investigations soon convinced him of the universal prevalence of disorder, laxity, inefficiency and extravagance. It was necessary, said Shore, to introduce system and regularity

[1] Cornwallis to Court. 1 Nov. 1788. [2] Second Report of 1810, App. IX.
[3] Melville Papers. To Dundas, 14 Aug. 1787.

where there had been disorder and misrule.[1] Cornwallis declared that upon his arrival he found the sub-treasurer at the Presidency playing with deposits amounting to three or four lakhs.[2] The Collector of Customs, whose salary was only 150 rupees a month, whilst that of his deputy was 500, was engaged in similar malpractices.[3] "The rapacity and misconduct of the Collectors," wrote one of Hastings's correspondents, "have made very heavy balances inevitable."[4] Cornwallis said that he had every reason to believe that nearly all the Collectors were engaged in private trade in a manner not merely injurious to the interests of the Company, but also oppressive to the people. The Company's Resident at Benares had been utilizing his absolute power to amass an annual income of nearly £40,000, exclusive of an official salary of Rs. 1,000 a month; and Cornwallis, visiting the zamindari in 1787, described it as "a scene of the grossest corruption and mismanagement,"[5] a district "devoted to the pillage of the friends and dependants of the Governor-General."[6] The Resident, he said, had not only extorted much more from the Raja than his predecessors had done, and monopolized the trade in sugar and other commodities, but had also entirely set aside the Raja in favour of a rapacious Mussulman, who had employed the Company's sepoys to prevent the inhabitants from running away.[7] In the greater part of the province of Bihar, too, the land was going out of cultivation, the people were abandoning their homes, and the revenue was failing.[8] The Directors complained not merely of the heavy balances but also of the increasing cost of revenue collection. Between 1766 and 1783, they said, the expense of collection had more than doubled, and the net revenue derived from Bengal was about £1,000,000 less in 1783 than in the former year.[9]

The removal of Grant, the Resident at Benares, before the end of the year 1787, and the appointment of Jonathan Duncan in his place, resulted in a great improvement in the condition of that important zamindari. Writing in 1789 Cornwallis declared that in two years Duncan had accomplished more than he had conceived it possible for any man to do, and had compelled the Raja

[1] *Shore Correspondence*, i, 164. [2] *Ross*, i, 278.
[3] I.O.R., Home Miscellaneous, vol. 369. Cornwallis's Minute dated 1 Aug. 1788.
[4] B.M. Add. MSS. 29170, fo. 276. G. N. Thompson to Hastings, 14 Nov. 1786.
[5] Melville Papers. To Dundas, 5 March 1787. [6] *Ibid.*, 17 May 1787.
[7] *Ibid.*, 16 Nov. 1787. [8] *Ibid.*, 14 Aug. 1787.
[9] Bengal Separate General Letter from Court, 12 April 1786.

to acquiesce in measures which greatly increased the prosperity of the country and the happiness of the people.[1]

In 1787 Cornwallis considered the idea of appointing a "Comptroller" with power over the Collectors in the Province of Bihar, and thought of Duncan as a suitable person for the office, but decided eventually to give Duncan a trial at Benares first; and the idea was dropped. "With all his honesty and ability," said the Governor-General, "I doubt whether he would have sufficient authority over men of equal standing in the service."[2] One of the Bihar Collectorships, however, was very efficiently managed by Thomas Law, who in 1790 was promoted to a seat on the Board of Revenue, and his friend and assistant, George Barlow, afterwards Governor-General. Law had been in the service since 1773, Barlow since 1778. In spite of his junior standing, Barlow was now brought to the notice of Dundas, so meritorious did his work appear to the Governor-General, who described him as a master of the country languages, possessing an expert knowledge of both revenue and commercial business, and "an active benevolence, an earnestness to relieve the distressed, and to promote the happiness of mankind, rarely to be met with."[3] In a short time their joint exertions transformed an almost ruined District into one of the most flourishing in the Company's territories.[4] And before the end of 1787 Cornwallis was able to report that the condition of the other collectorships in Bihar had greatly improved. "The Collectors," he wrote, "are roused from their lethargy and are following the excellent example of Mr. Law; and Mr. Brooke,[4] whose District was most in balance and in the most ruinous condition, met me on my return[5] and assured me that he was heartily ashamed of his past indolence and neglect of duty; that he was satisfied he had most justly forfeited my good opinion, under which circumstance an ample fortune, which he possessed, could not make him easy. He then pledged his honour to me that he would employ his utmost exertions, and he hoped in two or three years the Company would not have a more flourishing District than Shahabad. I understand from Law and others that hitherto at least he is zealously acting up to his professions."[6]

[1] Melville Papers. To Dundas, 7 Nov. 1789.
[2] *Ibid.* To Dundas, 14 Aug. 1787. [3] *Ibid.* To Dundas, 16 Nov. 1787.
[4] Brooke was the Collector of Shahabad.
[5] Cornwallis had been visiting Lucknow and Benares.
[6] Melville Papers. To Dundas, 16 Nov. 1787.

During the *interim* Governorship of Macpherson, an attempt had already been made to carry out the reform of the civil and military establishments which the Act of 1784 had ordered. For Macpherson and his "reforms," not merely Cornwallis, but Shore and the general body of the Company's servants, had the greatest contempt. "Lord Cornwallis," declared Shore, "upon his arrival found a Government rendered contemptible from its imbecility; all confidence in its measures or abilities destroyed, and private and public credit depreciated. To these assertions the concurrent voice of Europeans and natives would, with a few exceptions perhaps, bear testimony."[1] He further declared that he had not heard a single person speak of Macpherson's public conduct without contempt and indignation. "Never was any Administration so thoroughly despicable as his: a total want of energy, dignity and common sense distinguish it. Evasion was substituted for decision; caution and hesitation instead of action."[2] Colonel Pearce, Hastings's friend, thus described the situation in 1785 and 1786: "In the things that are removed they [the people] saw meanness, rapacity, timidity, injustice, tyranny, weakness, ignorance, fickleness; millions squandered on minions, annas extorted from their opponents and sent to the public treasury in procession to pay off the public debt; the public robbed to gratify private secretaries, the complainants threatened with destruction if they did not withdraw their complaints, despondency in the countenances of the injured, insolence and malignity in those of their oppressors—these things were J. Macpherson and Robert Sloper. . . . Under Lord Cornwallis I begin to breathe again; the creatures I have mentioned had almost suffocated me."[3]

Cornwallis never modified his first unfavourable judgment of Macpherson's character and administration. He rightly condemned Macpherson's ill-conceived plans of economical reform, for he had reduced the already utterly inadequate salaries of many of the Company's servants, thereby encouraging the abuses which he desired to destroy. "I do not think Sir John Macpherson's plan of striking off *a thousand rupees* from a man's salary, and adding twelve hundred to his establishment will enrich the State," wrote Cornwallis, "although by summing up all that is taken away without mentioning the additions, it might be

[1] *Ibid.* Shore to Dundas, 15 March 1787.
[2] *Shore Correspondence*, I, 128.
[3] B.M. Add. MSS. 29170, fo. 346.

possible to send the Directors in great good humour from Leadenhall Street to the *London Tavern*." [1] Macpherson was "certainly the most contemptible and the most contemned Governor that ever pretended to govern." [2]

Macpherson's reorganization of the Revenue Department had begun in February 1785 when the decision to abolish seven Collectorships and three District Civil Courts was taken.[3] The abolition of these and other posts, together with a reduction of salaries, excited much discontent in the service and fifteen Collectors sent a joint letter of protest to the Board, urging that their salaries were insufficient to support the dignity of their offices.[4] So deep was the resentment of the officials, Macpherson's letters to the Directors became almost apprehensive in tone. His uneasiness was reflected in a request for the Directors' moral support for his efforts to reduce expenditure. He was displaying an almost pathetic weakness and incapacity in dealing with the situation, and was exciting the contempt as well as the indignation of the senior servants.

In little more than twelve months after effecting a substantial reduction in the number of Collectorships as part of the plan of 1781 to withdraw Collectors altogether from the Districts and to leave the details of assessment with the Committee of Revenue, the central revenue authority at the Presidency,[5] Macpherson's colleagues induced or coerced him into adopting the opposite policy of increasing the number of Collectors and decentralizing revenue administration.[6] Cornwallis later declared that Macpherson was grossly ignorant of the whole business of revenue collection. "He sometimes made a good Regulation by the advice of Jonathan Duncan, but never had spirit to enforce it." [7] On this occasion it was Charles Stuart who proposed this fundamental change, and he declared that almost all whom he had consulted were decidedly in favour of employing Company's servants in the Districts. "There are at present," he stated, "upwards of twenty gentlemen employed in the out Districts, and the appointment of eight or nine more would complete the

[1] P.R.O., Pitt Papers, Packet 125. Cornwallis to Pitt, 6 Nov. 1788.
[2] *Ross*, i, 441. [3] Bengal Rev. Cons., 16 Feb. 1785.
[4] *Ibid.*, 10 May 1785.
[5] In 1786 the Committee of Revenue was replaced by the Board of Revenue, the President of which was a member of the Governor-General's Council.
[6] By September 1786 the number of Collectorships had been increased from 28 to 36 (Bengal Rev. Cons., 21 March 1787).
[7] Melville Papers. To Dundas, 8 Aug. 1789.

change proposed."[1] Stuart made the further suggestions that the settlement of the land revenue should, wherever possible, be made with the hereditary zamindars; and that the administration of civil justice should be placed in the Collector's hands, for the sake not merely of economy but also of preventing the unfortunate consequences that might result from a clash between the authority of the Judge and that of the revenue officials. The abolition of the independent Civil Courts would enable Government liberally to increase the Collector's salary without increasing the expense of revenue collection.[2]

Macpherson declared that whilst he was in favour of the system of Collectorships, he must oppose the suggestion that revenue collection and the administration of justice be put in the hands of the same individual, but that, should the majority of the Board decide against him, he would give the new system his support.[3] Shore had returned to England but his views, given in writing to Macpherson in January 1782, were now brought to the notice of the Board. Shore agreed with Stuart and Macpherson that only Company's servants should be put in charge of revenue and judicial administration. The people of Bengal, he said, were "ill calculated for these important trusts." He was strongly opposed to the policy of centralizing revenue administration at the Presidency, and urged the necessity of employing Collectors in the Districts. "The real state of any District," he pointed out, "cannot be known by the Committee of Revenue. A Farmer or Zamindar may plead that an inundation has ruined him, or that his country is a desert from want of rain: an amin is sent to examine the complaint; he returns with an exaggerated account of losses, proved in volumes of intricate accounts which the Committee have no time to read, and for which the amin is well paid. Possibly, however, the whole account is false. . . .

"I may venture to pronounce that the real state of the Districts is now less known, and the revenues less understood, than in 1774, since the natives have had the disposal of accounts; since they have been introduced as agents and trusted with authority, intricacy and confusion have taken place; the records and accounts which have been compiled are numerous, yet, when any particular account is wanted, it cannot be found. It is the

[1] Bengal Rev. Cons., 10 May 1785.
[2] *Ibid.*
[3] *Ibid.*, 18 May 1785.

business of all, from the ryot to the diwan, to conceal and deceive. The simplest matters of fact are designedly covered with a veil, through which no human understanding can penetrate.

"With respect to the present Committee of Revenue, it is morally impossible for them to execute the business they are entrusted with. They are vested with a general control, and they have an executive authority larger than ever was before given to any Board or body of men. They may and must get through the business, but to pretend to assert that they really execute it, would be folly and falsehood." [1]

On the question of the separation of the Executive and the Judiciary, Shore agreed with Stuart. He said: "People being accustomed to a despotic authority should only look to one master. It is impossible to draw a line between the Revenue and Judicial Departments in such a manner as to prevent their clashing; and in this case either the revenues must suffer, or the administration of justice be suspended. The present Regulations define the objects of the two several jurisdictions with clearness and precision, yet they continually clash in practice. Complaints are so blended that it is often impossible to determine to which tribunal they belong, and that there has not been more confusion than has actually happened, is owing to the discretion of those who have been entrusted with the administration of justice. It may be possible in the course of time to induce the natives to pay their rents with regularity and without compulsion, but this is not the case at present. If any force is offered, a complaint is made in a Court of Justice, and, whether true or false, a temporary protection is given to the complainant, who is released from the demands upon him; to realize them afterwards is no easy matter." [2]

We have set forth the views of Macpherson and his principal colleagues at some length because the Directors' orders to Cornwallis on the subject of revenue collection and the administration of justice were, to a considerable extent, based on a study of these Council proceedings.

In April 1786 the Provinces were re-divided into Collectorships as a result of the discussions of the previous year. The Committee of Revenue, established in 1781 with the object of ultimately replacing the Collectors and bringing the revenue to the Presidency without employing servants in the Districts, was

[1] Bengal Rev. Cons., 18 May 1785. [2] *Ibid.*

abolished in consequence of the Directors' orders, and on 12 June 1786 a Board of Revenue, which was to have nothing to do with the actual assessments and collection, but which was to be merely deliberative, exercising control of the Collectors' proceedings, was established in place of the Committee of Revenue.[1]

According to Macpherson the reform of the Civil Department was nearing completion when Cornwallis arrived in September 1786. But Cornwallis was so dissatisfied with the condition of the services that he at once made preparations for a complete revision and overhaul.

In their instructions dated 12 April 1786 the Directors, accepting the recommendations of Macpherson, Stuart and Shore, declared that the system of Collectorships should be retained, though the number should be reduced. It was felt to be expedient to retain the servants in the Districts not merely for the purpose of collecting the revenue in the most economical way, but also to strengthen the Executive, to facilitate the access to justice, to keep a watchful eye on the principal landholders and to guard against the intrigues of foreigners. As soon as possible the settlement of the land revenue was to be put on a permanent and unalterable basis, and the Collectorships too were to be considered as part of a permanent system. Their size was to be determined by the amount of revenue which was realized; the minimum amount, it was suggested, should be five lakhs except in the case of a frontier District. The number of Collectorships would therefore never exceed twenty or twenty-five.[2] The Directors, however, considered that the emoluments which Stuart had proposed (Rs. 1,200 a month, plus an annual commission of Rs. 30,000 for senior Collectors; Rs. 1,000 a month, plus Rs. 20,000 commission for junior Collectors) were on too generous a scale; but they accepted the idea that the Collectors should be paid a commission on the amount collected, in addition to a fixed salary. That the legislative and executive departments might be separate, the Directors ordered the Governor-General to continue the Committee of Revenue (which, as we saw, was styled Board of Revenue after 1786), as a body superintending the work of the Collectors. The Governor-General-in-Council would thereby be relieved of an enormous load of business. In order

[1] In consequence of the Directors' orders dated 21 September 1785.
[2] Bengal Revenue Letter from Court, 12 April 1786.

further to retrench expenditure, the Directors instructed Cornwallis to combine in the person of the Collector the offices of District Magistrate and Civil Judge.[1]

In March 1787 therefore, the number of Collectorships was reduced from 36 to 23,[2] and the separate District Civil establishments were cut down. The officials whose posts were abolished were given a subsistence allowance until vacancies occurred. To promote regularity and check abuses, Regulations of an elaborate character were issued for the Collector's guidance. All his proceedings in the three branches of his work were to be periodically forwarded to the Presidency, and a great variety of intricate revenue accounts, abstracts, etc., were to be sent monthly and yearly to the Board of Revenue. The Collectors were strictly forbidden to engage in private trade. That this restriction might cause no hardship, their salaries were substantially increased. Their pay was to be Rs. 1,500 a month (an increase of Rs. 300), and the commission on the collections was to be proportioned not to length of service but to the amount collected. Cornwallis declared: "If the principle of seniority of service only, had been adopted for regulating the latter, a servant who had charge of the collection of ten lakhs of rupees would often be entitled to receive more than another Collector superintending revenues to three times this amount."[3] It was estimated that nearly 2½ lakhs, or nearly 1 per cent. of the collections, would be available as commission. The largest individual amount would be about Rs. 27,500; the minimum 6,000. All other emoluments and perquisites, except a house allowance of Rs. 150 a month, were swept away.[4]

Cornwallis realized that the only way to purify the administration and to stimulate the zeal of the officials was to give them adequate salaries. Responsibility, he said, must be paid for, or the official will abuse his trust. "It is not by a moderate addition to the salaries of a few necessary and important offices, but by the suppression of useless places, and by preventing ruinous

[1] Bengal Public Letter from Court, 12 April 1786.

[2] Bengal Revenue Letter to Court, 31 July 1787. The Collectorships were as follows: Burdwan, Bhagalpur, Bihar, Birbhum, Calcutta, Chittagong, Dacca, Dinajpur, Hijili, Jessore, Midnapur, Murshidabad, Mymensing, Nadia, 24 Parganas, Purnia, Rajshahi, Ramgarh, Rangpur, Sarcar Sarun, Shahabad, Sylhet, and Tirhut. In 1790 Tippera, which had been under the Collector of Chittagong, was made a separate District. (Bengal Revenue Letter to Court, 12 April 1790.)

[3] *Ross*, i, 267.

[4] Bengal Rev. Cons., 8 June 1787.

bargains and collusive contracts, that the situation of our finances can be materially affected." [1]

In spite of the additional charge thus incurred, the total estimated expenditure in the Revenue Department fell considerably short of the maximum sum (72 lakhs) which the Directors, in their orders of 11 April 1785, had allowed. The salaries, including commission, which the Collectors were now to receive, were in some cases even more liberal than those which Stuart had suggested should be given, and which the Directors had refused to sanction. Nevertheless the Court approved the new scale, since no additional expenditure in the Revenue Department was made necessary. "Yet," they added, characteristically, "we cannot urge too strongly the necessity of adhering to the most rigid economy." [2]

The reorganization of the Revenue Department did not complete Cornwallis's administrative reforms. On 31 January 1788 the Governor-General-in-Council resolved, in accordance with the usual practice when such reforms were to be undertaken, to create a fourth branch of the Secret Department, the Secret Department of Reform,[3] and to devote one day per week to the task of overhauling the departments at the Presidency. At the first meeting of the Supreme Council, in this Department, Cornwallis lucidly explained the principles on which the Board should proceed. The number of offices should be cut down to the minimum requirements; salaries and allowances should be proportioned to the officers' responsibility and their unavoidable expenses; the salaries of the senior servants who held important offices should be sufficiently large to enable the officials to return home with a

[1] Cornwallis to Court, 16 Nov. 1786; *Ross*, i, 286.

[2] Bengal Public Letter from Court, 18 Feb. 1789.

[3] The other branches were the Secret and Political, the Secret and Military, the Secret and Foreign Departments. In May 1786 Macpherson had created a temporary Secret Department of Reform. The first meeting over which Cornwallis presided was held on 20 Sept. 1786; subsequent meetings were held on 25 Oct., 6 and 27 Nov., 15 Dec., 19 and 31 Jan. 1787, 7 and 27 Feb. 1787. In Sept. 1787 the Board arranged to sit again in the Secret Department of Reform to overhaul the Revenue Department, and the following resolution was passed: "The Board having resolved to take into consideration the exposes of the whole civil establishment as soon after the dispatch of the *Ravensworth* as their time would admit, Mr. Shore proposes to them, in order to facilitate the business and bring it into form for the ultimate decision of the Board, to undertake the examination with the assistance of Messrs. Larkins and Johnson, Accountant-General and the Accountant-General of the Revenue Department, and for this purpose to meet every Saturday until the whole shall be completed." I.R.D., Calcutta. Secret Dept. of Reform, Cons. of 31 Jan. 1788.

moderate fortune; no one should be allowed to hold offices in two different departments; and no one should be allowed to derive any pecuniary advantages from his office beyond those authorized by Government.[1] Cornwallis had no difficulty in persuading his colleagues to accept these rules of business; and the long Minute in which he justified and discussed these rules was intended for the benefit of the Court of Directors.[2]

In its Public Letter of 5 June 1788 Government informed the Directors that the reorganization of the public services was nearly finished, and that "many arrangements of a general as well as particular nature have taken place, which we trust will not only make some saving in the annual expense but will tend most essentially to simplify and expedite all the branches of the public business."[3] The proceedings of the Board in the Secret Department of Reform fill several bulky volumes, and its Despatch of 9 January 1789 consisting merely of a summary of the work of the previous twelve months, consists of over two hundred paragraphs. It would be undesirable to enter into any detailed examination of the multifarious changes effected in the departmental offices; the principles which guided, and the ideas which inspired, Cornwallis, are alone important. "I have been a most rigid economist," he said, "in all cases where I thought rigid economy was true economy. I abolished sinecure places, put a stop to jobbing agencies and contracts, prevented large sums from being voted away in Council for trumped-up charges, and have been unwearied in hunting out fraud and abuse in every department. As a proof that I have succeeded, you will see this year what never happened before—that our expenses have fallen short of our estimates."[4]

In 1787 the Collectors had been prohibited from engaging in private trade, and the prohibition was now made applicable to the members of the Board of Revenue. "This rule," declared Cornwallis, "has been adopted independent of any personal considerations, and it is our intention to consider how far the principle of it should be extended to other offices of importance, responsibility, and laborious duties, when the time of the occupants may be deemed sufficiently engaged in their public duties, and where they receive sufficient and liberal compensations for their services."[5]

[1] I R.D., Calcutta. Secret and Separate Cons., 31 Jan. 1788.
[2] See Note B at the end of this chapter for excerpts from this Minute.
[3] Bengal Public Letter to Court, 5 June 1788. [4] *Ross*, i, 306.
[5] Secret and Separate Bengal Letter to Court, 9 Jan. 1789.

The longer he remained in India the deeper grew his conviction of the absolute necessity of prohibiting all the Company's servants from trading; but many years elapsed before his ideas were carried out. Writing to the Directors in 1792, he expressed the opinion, based on several years' experience, "that the Company will never be well served, and I will go farther, and say that the honour and interest of the British nation will never be safe in India, until it shall be established as an invariable rule at all the Presidencies, that Company's servants shall be confined to the public business only, and particularly that those in office shall on no account be permitted to be members of agency in banking houses, or to transact mercantile business of any kind upon their own account. . . . I think it would be an improvement upon the system in Bengal to extend the restrictions to the commercial agents, which have been for some time past imposed upon the revenue and several other descriptions of servants, against engaging in private commerce; taking care at the same time that the allowances and emoluments to the commercial agents should be suited to the importance of their stations." [1] However, he did not think it possible to make the prohibition universally applicable at that time.

These great administrative reforms proved to be as beneficial to the Company's service as Cornwallis had anticipated. But they did little, indeed, to reduce expenditure, an object, however, which the Governor-General rightly considered to be of secondary importance. "We have never flattered you," wrote the Board to the Directors, "with sanguine expectations of being able by these arrangements to reduce your expenses much, yet notwithstanding the actual augmentation of some offices, this has upon the whole been effected. But we considered it of the last importance to check that tendency to which this Government has ever been subject, of increasing its expenses." They added: "Upon the whole we feel a conviction that our observations and labours will prove of utility to your affairs, and that the regulations and arrangements which we have made will promote the establishment of regularity in the conduct of the business of this Government, uniformity and simplicity in the accounts of its receipts and expenditures, and restrictions upon the latter preventing any abuse of them or improper increase in their amount." [2]

[1] I.O.R., Home Misc., vol. 379. Cornwallis to Court, 2 May 1792.
[2] Secret and Separate Bengal Letter to Court, 9 Jan. 1789.

The Governor-General-in-Council continued this work of administrative reorganization until 1789. At the beginning of that year the Board declared: "Some of our proposed arrangements are yet incomplete, and some have been resolved upon which are not yet carried into full execution. We by no means mean to assert that the whole is perfect; much time and watchful attention will still be required to carry into full accomplishment the variety of detailed arrangements which belong to this Government." [1]

4. Patronage and its Abuse

By reason of his strong and indeed almost unassailable position, Cornwallis was able to sweep away the worst abuses of patronage. Hitherto the Company's service had been regarded as a source of employment and livelihood for the relatives, friends and hangers-on of the governing class at home. Cornwallis was appointed Governor-General to rise above the sordid interests of patronage. He resisted requests for posts even when the applicants were supported by the highest personages in England. He resisted even the Prince of Wales. "Lord Ailesbury has greatly distressed me," wrote Cornwallis to Viscount Sydney, one of the Secretaries of State, "by sending out a Mr. Ritso, recommended by the Queen; but I have too much at stake. I cannot desert the only system that can save the country, even for sacred Majesty." [2] "I trust in God," he wrote in 1787, "that the rage of sending people to India will subside; it has cost me more money than I care to mention, to send home persons who must have died in the jail at Calcutta." [3] On the whole, Dundas, who displayed such a mastery in the art of political jobbing and wire-pulling as manager of the Scottish elections, gave Cornwallis loyal support in his efforts to prevent unsuitable persons from securing appointments in the Company's service, and rose above "the level of the mere political manager." [4] But even Dundas offended the Governor-General on one occasion by sending out a Mr. Anguish, a relative of the Duke and Duchess of Leeds, with a letter of recommendation. In reply, Cornwallis declared that the letter was one of the most unpleasant he had ever received from Dundas, and that it was absolutely impossible to provide for the man. Concluding his letter of sharp protest, couched, however,

[1] Bengal Secret and Separate Letter to Court, 9 Jan. 1789. [2] *Ross*, i, 273.
[3] Francis Edwards MSS., Cornwallis to Lord Sydney.
[4] Furber, *Henry Dundas*, p. 71.

in friendly terms, Cornwallis said: "I shall have a pleasure in asking Mr. Anguish often to the Government House, and in treating him with every degree of personal kindness; but I do not suppose that he is either of a turn or qualified to make his own way in any line of private business; and I must, my good friend, recall to your recollection that no Governor in India can confer an office or employment worth holding, or indeed any substantial favour, on a person who is not a covenanted servant of the Company, without essentially injuring the public interests, and committing an act for which he deserves to be impeached." [1]

In February 1787 Shore wrote to Hastings: "The system of patronage which you so justly reprobated, and which you always found so grievous a tax, has been entirely subverted. The members of Government, relieved from the torture of private solicitations, have more time to attend to their public duties." [2] Shore's statement, unfortunately, was premature, for in January 1788 Cornwallis complained that he was still being persecuted every day by people coming out from home with letters of recommendation. They either got into gaol or starved in the foreign settlements, he declared. "For God's sake do all in your power to stop this madness." [3] But the strong line which he took on this question of patronage did much to decrease the abuse.

By the year 1793 it had become evident that the reforms were greatly improving the character of the Company's service. Cornwallis could then declare that the temper of the times was changing, and that the Bengal service contained many valuable officers.[4] In 1789 he expressed the opinion that peculation and fraud were then practically non-existent in any department.[5]

NOTE A (p. 17)

THE Bills in Equity against Bateman, Sumner and Henchman were dropped. Nathaniel Bateman, with whom our friend Hickey had

[1] Melville Papers. To Dundas, 15 Oct. 1792. Subsequently Dundas handsomely apologized to Cornwallis for the perplexity and annoyance which he had caused; and added: "With every wish to promote the views of that gentleman as well as with a sincere desire to meet the wishes of his respectable friends, I must refer your Lordship to the rule I at first adopted that I always left it to your Lordship how far you could with propriety attend to the recommendations I *might have occasion to make*." (*To Cornwallis*, 23 Oct. 1793, Melville Papers.)

[2] B.M. Add. MSS. 29170, fo. 374.

[3] *Ross*, i, 310.

[4] *Ibid.*, i, 310.

[5] Melville Papers. To Dundas, 8 March 1789.

fought a duel in 1783 at the back of Belvedere House,[1] denied on oath having practised fraud in the silk contracts whilst a member of the Board of Trade (from 1775 to 1778). He admitted that he had received perquisites but strongly maintained that he had not acted dishonourably.[2] The Advocate-General stated that, for lack of evidence to disprove his declaration on oath, the suit ought to be abandoned; this recommendation was adopted, and in April 1787 Bateman was restored to the service as a member of the Board of Trade, although the Directors' orders despatched on 27 March necessitated his subsequent dismissal.[3]

John Sumner, who had been first a member of the Board of Trade (1782–4) and subsequently in charge of the Factory at Patna, made similar denials. It was thought useless to continue proceedings, and shortly afterwards he was allowed to return home.[4]

Thomas Henchman, whom Hickey declared to be "one of the most clear-headed and shrewdest men the East India Company ever had in their employ," had been successively a contractor in piece goods whilst Chief of the Malda Factory (since 1771), and Military Paymaster-General.[5] The case against him was dropped, though he was made to pay costs. Hickey, who helped to defend him, wrote in his Memoirs: "He was then restored to the Service, but he immediately sent in his resignation, declaring that he would no longer serve under such a set of illiberal men as the then Court of Directors. . . . It is almost superfluous to add that previous to such resignation he acquired a large fortune. Upon his return to England he became an eloquent and popular speaker in the General Courts of Proprietors, invariably attacking, and with considerable success, the measures and conduct of the Directors."[6]

Keighley, Rider, Barton and Blacquire, however, did not escape quite so easily. James Keighley, who had in turn held the posts of Commercial Resident at Bauleah,[7] Chief of the Factory at Kasimbazar, and member of the Board of Trade, agreed, after eighteen months' litigation, to discharge by monthly instalments the amount due to the Company, and by September 1788 he had paid over 72,000 rupees. In that year, after twenty-three years' service in India, he became seriously ill, but on account of his wilful negligence in submitting his answer to the Bill in Equity,

[1] *Hickey*, iii, 152.

[2] *Ibid.*, iii, 309; Bengal Public Letter to Court, 19 Feb. 1787.

[3] Bengal Public Letter to Court, 27 July 1787; Bengal Public Cons., 23 April 1787.

[4] Bengal Public Letter to Court, 19 Feb. 1787, 29 Jan. 1788.

[5] Bengal Public Cons., 17 Jan. 1787; Bengal Public Letter to Court, 19 Feb. 1787; *Hickey*, iii, 276.

[6] *Hickey*, iii, 310.

[7] It was the silk which he supplied to the Board of Trade, and which was sent home in 1784, that yielded only 1*s.* 1*d.* the rupee. (Bengal Public Cons., 17 Jan. 1787.)

the Supreme Council refused to allow him to return home. Keighley, in order to escape imprisonment after a writ of *ne exeat regno* had been issued, was obliged to furnish a security of four lakhs of rupees.[1] Eventually, in January 1789, he was permitted to embark on renewing the security,[2] and proceedings against him were transferred to the Court of Chancery in London. "After a most expensive litigation during several years," wrote Hickey, "he in a great measure succeeded against the Company; but being obliged to pay his own costs as well as part of theirs, it so involved him that he ultimately was arrested by some of his creditors and sent to the King's Bench Prison, where, I rather believe, he ended a worthless life." [3]

Jacob Rider, a member of the Board of Trade since December 1780, acknowledged that he had received a perquisite of over 3,000 rupees from Keighley, to whom the Board in 1781 had given contracts worth nearly five lakhs. In his reasoned reply to the Bill in Equity, Rider frankly explained the prevailing custom of the service. The Board, though consisting of some of the Company's oldest servants, received avowed salaries of only 1,250 rupees per month: a remuneration inferior to that of many of the junior servants. To supplement their altogether inadequate income, the members of the Board were wont to help themselves to five per cent. of the value of all Company's contracts, the President taking two shares and each of the other members one share. This arrangement was of long standing: indeed, it was openly discussed in London before Rider left home in November 1779, and he frankly acknowledged that until he was given to understand that he would receive ample perquisites, he exerted all his influence to be given some alternative employment.[4] He offered to refund the sum he had received from Keighley, but the Governor-General-in-Council informed him that the Court of Directors intended to recover the money which he had received from every other contractor.[5] A short time later Rider confessed that he had received 40,000 rupees from various contractors; he then undertook to repay that sum, with costs of suit, in two equal instalments on 15 January and 15 July 1790. The offer was accepted, and two years later he was restored to the service.[6]

William Barton, the Controller of the Export Warehouse, a member of the Board of Trade for eleven years (since 1776), and

[1] Two lakhs furnished by himself, and two by two persons of acknowledged property. (Bengal Public Cons., 17 Jan. 1787; 12 and 29 Feb., 5 Nov. 1788; Bengal Public Letter to Court, 19 Feb. 1787, 12 Feb. 1788; 6 Nov. 1788.)

[2] Bengal Public Cons., 26 Jan. 1789.

[3] *Hickey*, iii, 309–10.

[4] Bengal Public Cons., 29 Feb. 1788; Bengal Public Letter to Court, 6 March 1788.

[5] *Ibid.*

[6] Bengal Public Letter to Court, 6 Nov. 1788; Bengal Public Letter from Court, 10 Oct. 1792.

its President since 1785, was the most deeply involved. At first fortune favoured him, for on the advice of the Advocate-General the suit was abandoned for lack of evidence.[1] But a few weeks later, the Court's vindictive Despatch of 27 March 1787 arrived, and in consequence he was dismissed the service and again prosecuted.[2] In February 1788 he heard of Keighley's arrest on a writ of *ne exeat regno*. Fearing that the greater responsibility attached to his own former office would cause Government to demand an even heavier bail, far beyond his means, he fled from the Presidency on 2 February to the Danish settlement of Fredericksnagore, up the river.[3] It was a cruel necessity, he declared, which forced him to run away at a moment's notice after having served the Company for twenty-five years, and to leave his wife and children behind. He soon learnt that the Sheriff had confiscated his house and property. His unhappy wife now saw her pictures, tables, sideboards, silver spoons and candlesticks taken away by the unsympathetic bailiffs. Sorely distressed at the loss of her treasured possessions, she offered to pay 500 rupees for the return of some of her plate.[4]

On 26 May Barton wrote to Government volunteering to pay one lakh of rupees in return for the abandonment of all further claims; but the offer was rejected.[5] On 4 August 1789 the Supreme Court made a final decree against him, whereby he was to pay over 1,62,000 rupees, with costs.[6] Hickey tells us that Barton then "proceeded to Europe on board a Danish East Indiaman. He fixed his residence in the city of Copenhagen, purchased the rank of nobility, and after living a few miserable years in Denmark, departed this life."[7]

Blacquire, the Superintendent of the Company's Cloth Investment, was ordered to refund a sum which, with interest from 1784 at 10 per cent., amounted to over 22,000 rupees. He offered to pay it in three annual instalments, and mortgaged his property to enable him to do so; but the fifty-first clause of the India Act

[1] Bengal Public Letter to Court, 19 Feb., 27 July 1787.
[2] *Ibid.*, 14 Sept. 1787.
[3] Bengal Public Cons., 21 April 1788. A little later he went to Serampore.
[4] *Ibid.*, 24 March, 29 Dec. 1788; Bengal Public Letter to Court, 6 Nov. 1788. Barton's sequestrated property included 31 pictures, 4 dining-tables, 2 card-tables, one pair of couches, 27 chairs, 6 other couches, 3 pairs of looking-glasses, one pair of globe lanterns, 2 sideboards, one large writing-table with drawers, one bookcase with books, 4 carpets, one chariot and pair of horses, 12 table-spoons, 12 dessert- and 11 tea-spoons, one cruet-stand, 2 gravy spoons, one soup ladle, 4 salt spoons, 4 pickle-pots plated, one pudding-dish, one tart dish, 10 marrow spoons, one punch strainer, 2 saucepans, 5 candlesticks, one set of kitchen furniture, a small quantity of glass and china ware, 18 cows, 12 calves, one old buggy (light carriage), one old horse, and a quantity of liquor.
[5] Bengal Public Letter to Court, 6 Nov. 1788.
[6] *Ibid.*, 10 Aug. 1789; Bengal Public Cons., 12 Aug. 1789.
[7] *Hickey*, iii, 309.

of 1784, which prohibited the restoration to the service of any servant who "shall have been removed or dismissed from his . . . employment for or on account of misbehaviour, by the sentence" of the Supreme Court, prevented the removal of his suspension. Cornwallis, however, agreed to give him temporary employment at a nominal salary of 300 rupees a month, until the pleasure of the Directors was known.[1]

NOTE B

CORNWALLIS'S Minute of 31 January 1788 has never been printed. It is worth quoting at length, for it is full of sound argument. On the salary question he wrote:

"The labours of individuals who hold responsible offices under the company in Bengal, where they perform their duty with zeal, must be incessant and of great importance. I will instance a Collector of the public revenues; his authority extends over a large territory, and combines the three offices of a financier, a Judge, and of a Magistrate for the preservation of the public peace. The simple description of his several functions is sufficient to prove that his whole time must be constantly employed, and it would be still more evident if I were to enter a description of his particular occupations in each capacity. Some idea might be formed of it by persons in Europe if they were to suppose the same powers with respect to an extensive county in England vested in one man. In such a situation, a proper discharge of his daily duties might be deemed sufficiently laborious, but to improve the country, a Collector must advance still further, and, reasoning from experience, propose the institution of arrangements for promoting the public good and advantage of the Company, and carry them into practice when approved.

"All that I mean by these observations is to attract the attention of the Court of Directors to the magnitude of their affairs in Bengal, and to evince the necessity of animating the zeal of their servants, and encouraging the improvement and exertion of those talents which alone can secure the advantages derived from the possessions of the Company in the East, by a well-arranged and well-executed system of government.

"This object can only be effectually obtained by a uniform distribution of rewards on the one side, and of punishment on the other; the first must have the sanction of the Court of Directors, the latter must be enforced when necessary by this Government.

"There was a period, as I am informed, when the salaries of the servants of the Company were in general inadequate to provide them with a house for their residence; but they were supposed

[1] Bengal Public Cons., 1 April 1789, 6 July 1789.

to have emoluments which compensated for the insufficiency of their allowances. The consequences of this system are now apparent, and none can be more dangerous for a State to adopt, for the plain result is, that a strict adherence to the principles of honour must end in penury and distress; but there are very few only who will be able to withstand the pressure of exigency, and the boundary once past, the progress towards immorality will be rapid. The zeal of the honest will be languid, and many, after a strict adherence to the obligations of integrity for a time, will find an excuse in distress for reconciling themselves to the appropriation of secret and unavowed emoluments, by an argument however false in principle yet too forcible for the feelings to resist. . . ."

The principles upon which the Supreme Council was to proceed in its investigation into the state of the service, have been briefly mentioned in the text. Cornwallis justifies them thus:

"The first principle that every State should wish to adopt is to secure the honesty of its servants; to place people in situations of great temptation and responsibility without allowing them an adequate recompense, is a principle of false economy which will ever in the end prove most expensive. If rigorous punishments be ordained as the penalties of every deviation from the strict line of rectitude, and the Government should depend upon these alone for enforcing honesty, the event will disappoint their expectations. Distress will overcome principle, and although no argument can justify an immoral action, yet reason and humanity will plead in favour of distress and temptation. On the contrary, when a fair reward is allowed for labour and honesty, negligence and peculation should be deservedly punished with all the rigour which the law or the rules of the service can inflict.

"But we must further consider that the duties of this Government are of a nature which requires zeal in the discharge of them, in order to promote its interests. A languid performance of public duty according to official rules will prevent for some time the operation of great abuses, but it will never advance the interests of a State. These are either progressive or retrograde, and can rarely be rendered stationary; to save them from decline, attempts must be made to improve them.

"At the same time it is necessary to reflect that no State can or ought to provide fortunes for all its officers at once. Merit and long service have the first pretensions, and the junior servants of the Company ought to wait upon moderate allowances for their turn to receive a proper reward for a faithful and zealous discharge of their respective duties.

"But in the meantime their salaries should be such as will enable them with economy to subsist without involving themselves in debts or entanglements.

"These considerations suppose what ought to be adopted as a rule, that the senior servants should in general be preferred to places of the greatest trust and advantage; at the same time the rule cannot be fixed without exception, as it would discourage the exertion of extraordinary zeal and abilities in promoting the public interest.

"It is far from my intention in any of the rules which I have premised, or in these observations, to reflect upon the servants of the Company; much indiscriminate censure has been thrown upon them, but if instances have been quoted of deviations from rectitude which cannot be defended, some might also be adduced of the strictest adherence to honour and honesty where opportunity and distress have provoked temptation. To suppose the existence of secret and unavowed emoluments, and on this supposition to refuse adequate rewards for labour, is a principle destructive of morality and ruinous to a State. No such temptations should ever be held out. It is admitted that the servants of the Company in general have received liberal educations, and have been instructed in honest principles; with something to maintain them for the present, and a competency to look to for the future, they will be enabled to resist the force of temptation; but deprive them of that prospect, and the common experience of every man will suggest the unavoidable result.

"It is not without difficulty that these principles can be applied; the necessities of the Company are undoubtedly urgent, and I believe it must be admitted on the other hand that economy is not generally practised as it ought to be amongst their servants. To think of supplying luxury or heedless extravagance would be as useless as improper. But even the junior servants who are employed in the different offices under Government have a just claim to allowances that are equal to their reasonable wants.

"The Court of Directors have the fullest right to demand the minutest explanations on points of so much consequence to their interests, and for their information I shall enter into details which are unnecessary for that of the Board. Many of the expenses in this country upon a comparison with those in Europe will appear enormous, and if the salaries allowed are in the ratio to them, they will bear the same construction. Yet this is an evil that no economy can rectify. The rent of houses such as the generality of the company's servants are obliged to occupy is from three hundred to eight hundred pounds sterling per annum. Every person in this country knows that a house in Calcutta the rent of which is two hundred and fifty pounds per annum has seldom much convenience either in size or situation, both which circumstances are in this climate essential to health. The expenses of native servants if their wages only be considered, are rather more moderate than in Europe, but on the other hand a greater number is required and

cannot be dispensed with. I do not believe it possible for a man who keeps a house on a decent footing and on the lowest scale of economy, to be at an expense of less than one hundred and twenty pounds per annum for servants, and this sum with all others will unavoidably augment in proportion to his rank.

"In Calcutta the expenses of living are greater than in other parts of the Provinces, with an exception of a few stations, and when a man has after many years' labour obtained a high rank in the service he is expected to adapt his style of living to it.

"There is another circumstance which merits explanation. Whoever considers the nature of the offices in India, and the regularity with which the duties of them are in general performed, must admit that they are laborious. All sedentary employments in every part of the world are prejudicial to health, but in India much more so than in Europe, and in estimating the value of labour this reflection deserves attention. To form a just comparison between them, we must not only take into consideration the expenses of living but the climate also, and whilst it is understood that the servants of the Company are to return to Europe with a competency after a long service, salaries beyond an immediate subsistence must be allotted to them. . . ."

Those who have lived in India can appreciate these sensible observations. Complaints of the excessively high cost of living and particularly of house rents are as numerous to-day and as well-founded as they were one hundred and fifty years ago. In 1785 Macpherson had attributed the evil to the "large allowances Government officers have been receiving" and to the "superfluity of wealth" at the Presidency. "The expense of living," he said, "and the wages of native servants in the neighbouring settlements of Fredericksnagore, Chandernagore and Chinsura were not, prior to our taking possession of the two latter settlements, one half of what is charged at Calcutta, though all these towns are upon the banks of the same river and within the circle of one day's journey." [1]

In December 1785 the Rev. William Johnson and the Rev. Thomas Blanchard, the two Presidency chaplains, petitioned the Court of Directors against the reduction of their monthly salary from 1,200 to 535 rupees. Some years previously, when their salaries had been increased from 800 to 1,200 rupees, a Minute of Council had declared that "should the health of the Chaplains no longer permit their residence in India, they will have nothing to support an infirm constitution in Europe, for with the greatest frugality it is utterly impossible for them to save anything from their present income, which is not even adequate to their indispensable expenses." The chaplains stated that even 1,200 rupees a month was quite inadequate to provide them with a decent

[1] Bengal Public Cons., 21 March 1785.

subsistence upon retiring, or even to pay their passage home after many years' service in the tropics had ruined their health. They admitted that they received some occasional fees which, however, were "so very inconsiderable as by no means to make up the above deficiency and defray the expenses of a decent maintenance." Commercial firms in the town, too, had ceased their earlier practice of giving the chaplains a portion of their profits.[1]

Both in this and a subsequent petition to the Court of Directors the chaplains enclosed a statement of the high cost of living, signed by a large number of prominent European residents, mostly Company's servants, who, in fighting the clergymen's battle for better pay, were incidentally fighting their own. "To those who are unacquainted," they said, "with the inevitable expenses of the country, it may be observed that the junior chaplain to the Presidency, a gentleman whose frugality was never questioned, did actually pay 400 sicca rupees per month besides the taxes, for the house in which he lately dwelt; nor do we know of any house in Calcutta adequate to his situation, which he could have obtained for less money. Families who use all reasonable economy seldom incur less expense than 250 rupees per month in the wages of their servants. These sums, together, at an economical calculation, will not amount to more than half the entire monthly expense of living in this place." [2] It must, however, be confessed that some of the effect produced by this pathetic plea for more pay disappears with the knowledge that the Reverend William Johnson was sufficiently prosperous to own a house worth nearly a lakh of rupees.[3]

Macpherson had also referred to the "extravagance and licentiousness" of Calcutta servants. Figures quoted in the *Calcutta Gazette* (31 March 1785) and the Fifth Report of 1812 show that wages had increased by 50 per cent. and more between 1774 and 1785:

	1774.	1785.	Wages proposed by the Select Committee of British Inhabitants of Calcutta, 1787 (Bengal Public Cons., 13 Aug. 1787).
	Rupees per Month.		
Cook . .	8 to 15	15 to 30	—
Coachman	6 to 8	10 to 20	10
Hairdresser	5 to 8	6 to 16	4/4
Bearer. .	18 (for seven)	4 (each)	3
Syce . .	3 to 4	5 to 6	4/8
Dhoby .	2 to 3 (bachelor)	6 to 8	4
,, . .	4 to 6 (for family)	15 to 20	10

[1] Bengal Public Cons., 19 Dec. 1785.
[2] *Ibid.*, 14 Feb. 1787.
[3] *Ibid.*, 15 Nov. 1785.

"It is universally acknowledged," wrote one of the two Police Superintendents, "that almost all robberies are perpetrated by the aid and connivance of servants; I have therefore taken the liberty to propose that an office for the registration of all menial servants be established and added to the office of the Superintendents of the Police." [1] The suggestion was taken up by the British residents in Calcutta who in April 1786 appointed a Select Committee to frame Regulations for the employment of Indian servants. Its chief proposals were: a register of servants should be compiled; no unregistered servant should be given work; no registered servant should be given employment without a "chit" from his late master. Servants who might succeed in obtaining a new post without a testimonial should be sent to gaol, and if, after three weeks' imprisonment, they should still be unable to procure one, they should be flogged and treated as vagabonds. Wages should be standardized; Europeans paying higher wages than the scheduled rate should be fined; servants accepting higher wages should be fined and imprisoned. These Regulations should be enforced by an annually elected Committee of twenty-four Europeans; members who neglected to attend its meetings should be punished by the Supreme Court of Judicature like Grand Jurors who absented themselves from the Sessions.[2]

But these interesting proposals were of far too drastic and revolutionary a nature to meet with universal approval; the Committee's report was not unanimous; the minority protested that the cure would be worse than the disease, and the matter was eventually dropped.[2]

[1] Bengal Public Cons., 21 March 1785.
[2] *Ibid.*, 13 Aug. 1787.

CHAPTER II

THE ADMINISTRATION OF CRIMINAL JUSTICE BEFORE 1790

1. The Law Courts

WHILST Cornwallis was busily engaged upon the task of reorganizing the Government Departments, he was also making inquiries into the administration of justice. To understand the situation one must go back to the year 1772, for the creation of the judicial system was essentially the work of Hastings. His aim had been to preserve Indian law and institutions so far as was practicable, and to sweep away only the defects of the existing machinery. He made justice cheaper and more readily obtainable by reforming and remodelling the old local Criminal Courts, which were established in each of the Districts into which Bengal was divided for administrative purposes, but which had ceased to function effectively. Each District Court (Faujdari Adalat) was staffed by Indian Judges, the Kazi and Mufti, and two Maulvis; and their proceedings were superintended in a general way by the Company's Collector, a covenanted servant. That is, he was instructed "to see that all necessary evidences are summoned and examined, that due weight is allowed to their testimony, and that the decision passed is fair and impartial."[1] These local Courts were given extensive powers of jurisdiction, but sentences involving confiscation of property or capital punishment had to be sent for confirmation to the superior Criminal Court, the Nizamat Adalat. Hastings transferred the seat of justice, as well as revenue, from the Nawab's residence at Murshidabad, to Calcutta, where he re-established the Nizamat Adalat under an Indian Judge, assisted by the Chief Kazi, the Chief Mufti and three Maulvis. And, in order that "the decrees of justice on which both the welfare and safety of the

[1] Proc. of Comm. of Circuit at Kasimbazar, 15 Aug. 1772.

country so materially depend, are not injured or perverted by the effects of partiality or corruption," the proceedings of this Court were to be supervised by one of the members of the Governor's Council.[1] The Nizamat Adalat had to revise the proceedings of the District Criminal Courts, to signify its approbation or disapprobation of capital sentences for the Naib Nazim's warrant. Hastings informed the Court of Directors: "Although the execution of the penal laws in this country is professedly the province of the Nawab, and we therefore wished as much as possible to avoid any apparent interposition on this subject, yet the importance of a steady and vigorous execution of justice to the peace and security of the people, and the consideration of the youth and inexperience of the Nawab which exposed him to an improper influence from the officers of his Court, has rendered it necessary that we should superintend this department of Government. According to the institution of the Courts for the trial of Criminals, their proceedings are transmitted and pass under the revisal of the Supreme Court in Calcutta, to which it belongs to pass sentence in all capital cases, which is afterwards laid before the Nawab for his warrant of execution."[2] But this transmission of sentences from Calcutta to Murshidabad gave rise to such excessive delays in the execution of justice that, in November 1773, the Naib Nazim, Muhammad Riza Khan, was persuaded to delegate his authority to Sadr-ul-Haq Khan, the Daroga of the Nizamat Adalat: a change which facilitated the Governor-in-Council's control of that Court's proceedings.[3] Thus, in effect, Hastings, who, on 23 November 1773, was expressly invited by his colleagues to supervise the Daroga in the performance of his duties, "as well in revising sentences of the Adalat, as in passing the warrants and affixing the seal," became the superintendent of the administration of criminal justice in all the Bengal Courts.[3] But in October 1775 the Council majority, having deprived Hastings of his power, restored to Muhammad Riza Khan his former authority as Naib Nazim; the administration of criminal justice was once more under his sole superintendence and control, and the Nizamat Adalat was again removed to Murshidabad.[4]

Meanwhile the Supreme Court of Judicature had been set up

[1] Proc. of Comm. of Circuit at Kasimbazar, 15 Aug. 1772.
[2] Monckton Jones, *Hastings in Bengal*, p. 336.
[3] Bengal Rev. Cons., 23 Nov. 1773. [4] Bengal Secret Cons., 18 Oct. 1775.

in Calcutta in accordance with the provisions of the Regulating Act of 1773. It consisted of four English Judges appointed by the Crown and empowered to administer English, not Indian, law to all "British subjects," whatever that vague phrase might mean. The Supreme Court was established mainly for the purpose of hearing and deciding charges brought against the Company's servants; but in addition it was authorized to hold two sessions as a Court of Oyer and Terminer and Gaol Delivery in the town of Calcutta and Fort William and the Factories subordinate thereto. In this limited sphere Indians were amenable to its jurisdiction.

The Council majority had not merely handed over the superintendence of the Criminal Courts to Muhammad Riza Khan, but had also authorized him to "new model and correct" the judicial system in whatever way he pleased.[1] Accordingly in 1776 new Regulations were issued by the Naib Nazim, whereby there were to be twenty-four Criminal Courts in the Districts, but these were so unequally distributed that only one Court was allotted for the Province of Bihar; thus witnesses as well as the accused were frequently compelled to make a journey of sixty or even seventy coss [2] to the Criminal Court; the distribution of the Courts in Bengal was also unsatisfactory.[3]

In 1781 Hastings, having regained his former authority, reversed the policy of abandoning the Council's control of the administration of criminal justice, and on 6 April a new Department was established at the Presidency to supervise the working of the Criminal Courts. A covenanted servant of the Company was appointed, with the title of Remembrancer of the Criminal Courts, to aid the Governor-General in this task of supervision.[4] At the same time the Faujdars (Police Magistrates) whom Hastings and Muhammad Riza Khan had appointed to supervise the police and commit suspected criminals for trial, were dismissed, and the Judges of the District Civil Courts (the Diwani Adalats)

[1] Bengal Secret Cons., 18 Oct. 1775.

[2] A coss is about two miles. [3] Bengal Rev. Cons., 5 July 1782.

[4] *Ibid*, 6 April 1781. That this official's supervision of the Criminal Courts was bound to be inadequate is clear from the Regulation which created the appointment. The Nawab was to give orders "that lists with the names of all prisoners in actual confinement by orders of the Faujdary Courts be monthly transmitted to the Governor-General, with separate lists of all persons committed in the course of the month . . . and similar lists of all persons discharged . . . together with copies of the fetwahs or sentences, and hookums or orders of the Nazim passed and issued in the course of the same month." The information obtained was thus obviously very meagre.

who were all covenanted servants, were invested with the office of Magistrate, empowered to arrest suspected criminals and to send them to the nearest Criminal Court for trial.[1]

On 5 July 1782 the Governor-General-in-Council, in order to cut down expenses, reduced the number of Faujdari Adalats from twenty-four to eighteen. The Courts were to be situated in such a manner as would facilitate the course of justice in spite of the reduction of the number.[2]

From April 1781 until June 1787 the Civil Judges exercised only judicial and magisterial functions, and had nothing to do with revenue collection: a circumstance, declared Cornwallis, which made their authority over the Zamindars and other landholders insufficient. And though the substitution of English for Indian Magistrates introduced greater regularity into the judicial system, it gave rise to a considerable evil. For the non-existence of petty Courts (the English Justices of the Peace having no power to try even the most trivial offences) occasioned a serious congestion of the District Criminal Courts, and suspects were consequently liable to be kept in prison for months without trial. On 27 July 1787, however, the Magistrates were empowered to try persons accused of certain petty offences, and to inflict corporal punishment to the extent of fifteen stripes, or to inflict a fine not exceeding two hundred rupees, or to impose a sentence of fifteen days' imprisonment.[3]

In 1787 therefore, the shadow of the Nawab's authority in criminal matters was still suffered to exist, and the administration of criminal justice remained almost entirely in Indian hands. But the system was notoriously defective. In every District the gaols were overcrowded; murders, dacoities and other serious crimes were daily committed with impunity, and there was a general feeling that life and property were very inadequately protected. The control of the proceedings of the Mufassal Courts was exclusively in the hands of Muhammad Riza Khan, who presided over the Nizamat Adalat at Murshidabad. The sentences passed by that Court were final and irrevocable, and were often not even notified to the Governor-General (through the Remembrancer to the Criminal Courts) until they had been carried into execution; and even then, such meagre information as the prisoner's name and the nature of the crime and punish-

[1] Bengal Rev. Cons., 6th April 1781. [2] *Ibid.*, 5 July 1782.
[3] *Ibid.*, 27 July 1787.

ment, was alone revealed. Since the grounds of the sentence were not divulged, the Governor-General and Council had no means of checking and revising the arbitrary and capricious proceedings of the Nizamat Adalat.

Muhammad Riza Khan, who appointed all the Judges of the District Criminal Courts and who had the power to dismiss them at his will without reference to Government, was not without excellent qualities. Shore, in 1782, declared that he was the only person in the country qualified to fill the post of Naib Nazim.[1] Thomas Law, one of the most experienced of the Collectors, declared, in 1790, that Muhammad Riza Khan had performed as much, if not more, than perhaps any other Indian could have done.[2] And when Muhammad Riza Khan died, in September 1791, the Governor-General-in-Council wrote to the Directors: "His honourable character, his regard to the English for a long period of time, and the services he has rendered in the highest offices in Bengal, are testified upon the records of this Government and well known to the Company in England. His public and private worth equally made him an object of esteem and they entitle his memory to respect. His fidelity and attachment to the Company will always give his family while they deserve it, a claim to their good offices."[3]

"The present Faujdary system," said Shore in 1782, "is a mere system of rapine and plunder, and furnishes another proof against the leaving natives with uncontrolled power." If Muhammad Riza Khan were left to himself, thought Shore, he would carry out his duties well, "but he is so circumscribed by recommendations of particular persons, and by the protection held out to his officers by Europeans, that to my knowledge he has not been able to punish them, even when they have been convicted of the greatest enormities, and he has often on this account been blamed, where his hands were tied up."[4] His actions might frequently, or even generally, be entirely proper, but there was reason to believe that he was often guided by the interested promptings of the flatterers and parasites who surrounded him. The insecurity of their tenure almost compelled the Judges to take bribes, so that they might be able to live when deprived of their positions. Their salaries were quite inadequate

[1] *Ibid.*, 18 May 1785. [2] Law, *Sketch of some Late Arrangements*, p. v.
[3] Bengal Public Letter to Court, 25 Nov. 1791.
[4] Bengal Rev. Cons., 18 May 1785.

to support the dignity of their offices and to place them above temptation. One of the Collectors declared that "nothing has perhaps more contributed to the continuance, if not increase, of dacoity, than the belief entertained by the inhabitants in general, probably on good grounds, of the corruption prevalent in the provincial Criminal Courts, which, if it exists, may be chiefly owing to the scantiness of the principal officer's salary; and nothing is of so much consequence as to remove such an opinion, for dacoits will certainly continue their depredations as long as they believe that with part of their plunder they can procure their exemption from punishment, and no witnesses will ever appear against them when, from the corruption of the Judge, they believe their evidence, instead of bringing the offenders to punishment, will only expose themselves to their resentment and to the risk of losing their lives or property." [1] The Judges, indeed, were paid only a hundred rupees a month: a circumstance, declared the Burdwan Collector, which accounted for the instances of "unqualified and incapable men being nominated to this office of high trust and dignity, of men chosen from the dregs of the people, ignorant, artful and unprincipled." "Nor," he went on, "can it be conceived that men of family and education will dedicate the whole of their time to so laborious and disagreeable an employment, for the mere avowed salary which cannot positively afford means of procuring more than a bare subsistence, unless some secret motive, some concealed view of advantage, some illegal perquisites, led them to an acceptance of a station where the reward is so disproportioned to the labour." [2] However, in 1790 the majority of the Collectors stated, in reply to a questionnaire circulated by Government, that the Criminal Judges were qualified for their positions, so far as education, if not character, was concerned.[3] Most of the Collectors, too, declared

[1] Bengal Rev. Cons., 3 Dec. 1790. [2] *Ibid.*

[3] Some of their comments on the character and capacity of the Judges are of sufficient interest and importance to be given in a footnote. Henry Lodge, the Commissioner at Bakargang, declared: "When I speak of their principles I do not confine myself to the short experience which my commission has afforded, but from the impression which I have imbibed, and here give as the result of near twenty years' acquaintance with their characters. I think there are hardly any among them qualified by principles for the office of Judge or Magistrate. . . . Very few, if any, of the natives, have a claim to integrity of character." The Collector of the Purnia District said: "I am not prepared to produce particular instances of ignorance or misconduct, but in the general opinion the corruption of the Provincial Courts of Faujdary is a matter of public notoriety." "During the period of my acting as a Magistrate," stated the Collector of

that the Judges' salaries were very inadequate.[1] Salaries were not merely insufficient, but often irregularly paid, and were sometimes subject to serious deductions at the source. They were often from three to five months in arrears,[2] and occasionally it happened that 25 per cent. or more was deducted. Some of the Collectors had definite evidence that the Judges accepted bribes.[3] Another objectionable feature of the judicial system was the immensity of the power which the Judges possessed. In all cases except those affecting life and limb, the mufassal Judges pronounced sentence on their own authority, without reference to Murshidabad. In capital cases the proceedings were forwarded

Burdwan, "I have been acquainted with some few, who were qualified by education and principles, for the station they held, though I am afraid this is far from being the case in general, nor is it necessary for me to justify this assertion by pointing out particular individuals as it is to be hoped, the intended reform will effectually provide against the evil in future." Mr. Bird, the Chittagong Magistrate, declared that few of the evils which he had pointed out, "can be remedied, so long as the mofussil Courts shall continue to be composed of natives." "Justice is weighed in golden scales," he said. "The natives in general," wrote the Collector of the Dacca District, "are deemed so void of integrity and prone to corruption, that I am clearly of opinion, they are by no means fit to have the sole authority and control entrusted to them."

On the other hand, Keating, the Collector of Birbhum, wrote: "The present Daroga I believe from education, abilities and integrity, to be fully competent and deserving the trust reposed in him: the Kazi, his Naib and the Munshis, etc., appear competent to the offices they hold. . . . I cannot but express my highest satisfaction with the present Daroga." The Magistrate at Dinajpur declared: "In two instances, one, the Daroga who was originally appointed by the Naib Nazim upon the first establishment of the present Court, and who died here, I found not only to be a very upright Judge, but a man possessing superior learning. The other, the Daroga at present in station and who is deserving of a similar encomium with that of his predecessor." "I have great satisfaction," stated the Jessore Magistrate, "in this opportunity of noticing to the Board the merits of the Faujdari Daroga, who has held this appointment fourteen years with credit to himself and satisfaction to everybody." Mr. Burrowes, the Collector of Midnapur, wrote: "To the best of my own judgment and from every information I have heard, the Daroga of this station and all his officers, are well qualified for their employs by education and ability, nor am I authorized by anything that has yet come to my knowledge to hint the least suspicion of their principles." Mr. Redfearn, the Collector of the Nadia District, stated that the Daroga "is, I think, very well qualified for the office he holds, and his conduct in the discharge of his duty, as far as I have had opportunities of judging of it, which have been very frequent, in my opinion does him great credit." The Collector of Bhagalpur said: "As far as the abilities, knowledge and principles of the native officers have come within my observation, they have appeared to me sufficiently qualified for the trial of prisoners; common report, indeed, pronounces native Judges to be venal, but I am not in possession of any proofs to warrant my recording that report, as my own opinion." (Bengal Rev. Cons., 3 Dec. 1790.)

[1] Bengal Rev. Cons., 3 Dec. 1790.

[2] Several Magistrates stated that the delay in paying salaries was due to the absence of houses of agency, bankers and shroffs at some places, and to the expense of bringing money from Murshidabad. (*Ibid.*)

[3] *Ibid.*

to the Nizamat Adalat for the decision of the Naib Nazim. But that procedure was a very inadequate safeguard against wrongful condemnation. From the time of their commitment by the English Magistrate, prisoners remained in the custody of the Judge, who alone decided how long they should remain in gaol before being brought to trial, what witnesses should be summoned, on what points they should be examined, and in what manner their evidence should be recorded. In these circumstances the power of the Judge was almost unlimited. His Court was generally situated at a great distance from the Nizamat Adalat at Murshidabad; the English Magistrate, who might not be so far away, had no authority to interfere with the Court proceedings, and the Judge could, if he so desired, entirely pervert the course of justice. With very little possibility of detection he could, in return for a seasonable bribe, manipulate the evidence in such a manner that, when transmitted to the Naib Nazim, it would be sufficiently convincing to procure the prisoner's acquittal; or, in other circumstances, he would force the prosecutors to withdraw their charge. The decisions of the superior Court entirely depended on the evidence which he chose to submit; and so, to all intents and purposes, his actions were uncontrolled.

The Judge's power to detain accused persons in prison without trial was open to grave abuse. Sometimes, indeed, the delay was due either to the accumulation of cases on the files, or to the difficulty of procuring the attendance of witnesses. Frequently, however, it was the result of the negligence or venality of the officials. The accused might, indeed, be eventually acquitted, but nevertheless they suffered all the disagreeable consequences of a long imprisonment. If they were convicted, hardly less harm was done, for the long delay tended to destroy the deterrent effect of their punishment. In very favourable circumstances prisoners might have to wait a mere ten days before being brought into Court, and at Murshidabad there was one case of a murderer being executed only nine days after he had been committed for trial.[1] But the minimum period of time that elapsed between arrest and sentence was, for the provinces in general, three months, according to the information which the Collectors obtained from the Court records. Only four Collectors could report that in their Districts no instances had come to their

[1] Bengal Rev. Cons., 3 Dec. 1790.

knowledge of men being imprisoned for more than twelve months without trial. Cases in which accused persons had been imprisoned for a much longer period were mentioned by all the other Magistrates. At Burdwan, Jessore and Sylhet men had been kept in confinement for five years without trial; in the Twenty-four Parganas, for eight years and twelve years.[1] Nor was the scandal confined to the mufassal Courts, for the proceedings of the Nizamat Adalat were often as dilatory. The Magistrate at Dacca reported that there were many prisoners whose trials in the local Courts had long been completed, but, though the proceedings had been transmitted to Murshidabad, the Naib Nazim had not passed sentence. "I have been at this station near two years," wrote the Chittra Magistrate, "in which time I have apprehended a great number of murderers and robbers, but the Nawab has not to this day thought proper to make an example of any of them, though I have frequently addressed him on the subject." [2]

On the character of the Judge depended to a considerable extent the severity or lenity of punishments, which, indeed, often seemed to bear little or no relation at all to the nature of the offence. They could be atrociously severe or ridiculously light. In the determination of a sentence the merits of the case were often but little considered; one Magistrate declared that murder was punished less frequently than any other crime; another stated that not one man in five hundred who were deserving the death penalty, was executed.[3] A third said that of eighteen convicted murderers only three were hanged; the rest were released.[3] At Chittagong, on one occasion, three convicted murderers were merely flogged. At Burdwan two prisoners convicted of perjury were released without explanation. Two men who had committed several dacoities were sentenced to receive thirty-nine strokes of a kora (thirty-nine seems to have been the usual number prescribed), and four months' imprisonment. Such a flogging, effectively administered, would have caused certain death; but, declared the Burdwan Magistrate, "the execution of this sentence as now applied, does not exceed in severity that which may be inflicted by the Magistrate upon

[1] *Ibid.*

[2] *Ibid.* The Magistrate's representation was communicated to the Naib Nazim who was asked to take steps to prevent such a state of affairs from recurring. (*Ibid.*, 26 March 1788.)

[3] Bengal Rev. Cons., 3 Dec. 1790.

every petty offender. The criminal, sensible of this, regards it with indifference and even submits to it with alacrity: thus by the excess of punishment awarded, the very spirit of punishment is totally annihilated." [1] Seven boys, of whom the eldest was twelve years of age and the youngest six years, were on different occasions arrested with dacoits and sentenced to a long term of imprisonment for crimes which they could not possibly have committed; eventually the Government came to know of their predicament, and in 1792 they were released after having spent from five to seven years in prison.[2] The Collector of Chittagong also reported the case of a young man who had been in gaol for upwards of fifteen years, although no charge had originally been brought against him; at the time of his arrest, in the company of his father, he was not more than eight years old.[3] Four other prisoners who were set at liberty in 1792 by order of Government had been convicted of robbery at the ages of fourteen, eleven, thirteen and eleven; they had been in gaol for sixteen, nine, nine, and four years respectively.[4]

In 1789 one of the Magistrates reported that whilst several dacoits in the Sundarbans had been punished with death, their leader, a wealthy landowner, had escaped with two months' imprisonment.[5] In 1791 a man complained to the Magistrate at Burdwan that he had been falsely accused of robbery but had been offered his release, in the absence of evidence against him, provided that he would give fifty rupees to the police and two hundred rupees to the officers of the Criminal Court; his sufferings induced him to offer one hundred rupees, and then he was set free.[6] Another complainant alleged that when he reported two men to the Faujdari Judge for misappropriating his property, they gave the Daroga one hundred rupees, whereupon he released the accused and arrested the complainant.[7] Another complainant alleged that property worth two hundred rupees was stolen from his house and that part of it was discovered in the possession of two men, who, when arrested by the Magistrate's order, bribed the Judge to release them, with a hundred rupees.[8] The case of Mr. Schuman, an indigo planter in the Tirhut District, illustrates, in the Collector's words, "the shameless and

[1] Bengal Rev. Cons., 16 April 1790.
[2] Bengal Rev. Jud. Cons., 7 Dec. 1792.
[3] *Ibid.*
[4] Bengal Rev. (Judicial) Cons., 21 Dec. 1792.
[5] Bengal Rev. Cons., 9 Dec. 1789.
[6] Bengal Rev. (Judicial) Cons., 15 July 1791.
[7] *Ibid.*
[8] *Ibid.*

iniquitous procedure of the Criminal Court of Darbhanga." It appeared that Mrs. Schuman was so little devoted to her husband that she tried to murder him by poisoning his tea, but she had succeeded only in making him seriously ill for three days. The principal witness for the prosecution, a woman, to whom Mrs. Schuman had offered the sum of twenty-five rupees to procure the poison, was not allowed to give evidence, nor were several others whose testimony would have been of importance. Schuman further stated that the Judge had treated him more like a criminal than a complainant seeking justice; that guards had been set over him; that he had not been allowed to return home until he had signed a document attesting his wife's innocence; that some of the prosecution witnesses who had refused to perjure themselves had been put in gaol, and that the judge had threatened to put Schuman's vakil in irons. Mrs. Schuman was acquitted, and the servant who administered the poison was let off with forty strokes with a cane.[1]

Another peculiar case was reported by the Magistrate at Dacca in July 1788. A zamindar, a mere boy of twelve, had been charged with having planned a murder in 1783. He had been found guilty and sentenced to be imprisoned until he produced the actual murderers. But upon investigating the case the Magistrate found that the charge was extremely ill supported and that there seemed to be some truth in the boy's assertion that the charge was a malicious fabrication designed by his enemies with the object of confiscating his lands. The incriminating evidence of one witness had been obtained by torture, and the Judge, in his record of the trial, which was sent to Murshidabad, had carefully omitted to state the accused's age.[2]

Before attempting to introduce reforms, Cornwallis ordered the Magistrates to report on the state of the law Courts within their sphere.[3] The information thus obtained by Government showed

[1] Bengal Rev. Cons., 26 March 1788. The Naib Nazim was requested to examine the records of the trial, and if it appeared that the trial had not been properly conducted, he was requested to order a re-trial at Darbhanga, or, alternatively, to send for the witnesses and investigate the complaint himself.

[2] *Ibid.*, 9 July 1788. In this case Muhammad Riza Khan was ordered to release the zamindar upon his giving sufficient security for his appearance, and to send the Board a copy of the proceedings of the Criminal Court.

[3] The Questionnaire ran as follows:

i. What length of time is ordinarily consumed between the commitment and sentence on prisoners? This is to be illustrated by instances of the shortest and longest periods within each Magistrate's knowledge.

ii. Do murder and robbery such as dacoity generally meet with the punish-

how widespread were the evils which had been exposed, and that before a better system of administering criminal justice could be devised, many defects had to be removed. The task would obviously be a difficult one, and another factor, not yet mentioned, complicated the situation.

2. The Muhammadan Law

The Muslim conquerors, centuries before, had brought with them their own Law, which was based on four main sources: the Quran, the Decisions of the Prophet in the capacity of Judge, the older customary Law of Medina, and Equity. After Muhammad's death this vast and undigested mass of material was codified according to the ideas of four great schools of legal thought that were founded during the rule of the Abbasids, by the celebrated and revered lawyers Abu Hanifa, Malik ibn Anas, ash-Shafi'i, and Da'ud az-Zahiri. It was the Hanifite code that was established in northern India and imposed on the conquered Hindus who vastly outnumbered their rulers. Though the Muhammadan Law regulated the lives of the Hindus, they were for the most part ignorant of its substance and of the language in which it was written. It had been designed to serve the needs of a society profoundly different from that which existed in Bengal in the latter half of the eighteenth century. It was regarded by devout followers of the Prophet as a wonderful, impressive and sacred monument of a far-distant age, as something that would defy the ravages of time, that would remain unchanged—amidst a changing world. The fountains from which it flowed were deemed too holy to be contaminated by the impious hand of the innovator; and the veneration of all pious Muslims for the Prophet, and their reverence for his inspired judgments were so

ment of death, when apparently meriting it, or otherwise? Instances in like manner to be adduced on this question.

iii. Are the officers of the Provincial Courts regularly paid their allowances, or otherwise?

iv. Are the officers in general qualified by education and principles for the trial of prisoners?

v. Are their allowances adequate to their situations?

vi. Are the prisoners well or ill treated whilst in confinement?

vii. Do the principles of the Muhammadan Law as applicable to criminal cases appear well adapted to the suppression of crimes or otherwise? And if not, what points stand most in need of amendment?

viii. What effectual means can be devised for the suppression of dacoity and water robbers?

ix. What are the most effectual means of reforming the general mufassal Police of the country, at the least expense to Government?

profound that, strictly speaking, no new legislation had ever been made since his death more than twelve centuries before.

The Muhammadan Law, therefore, had all the virtues and vices of a rigid and unchanging code. However well it might have served and protected the primitive society amidst which it had sprung into being, as administered in Bengal in the late eighteenth century under the government of the East India Company, it was in many ways strangely out of place. The Muslims adhered tenaciously to established forms and precedents; their religious feelings gave rise to an extreme dislike of innovation. Their legal code was based on a static, not a dynamic, conception of Law. That was its outstanding defect. This is essentially true in spite of the fact that four different codes existed in the Muhammadan world. It has been justly observed that "the hope for the future in Islam lies in the principle of the agreement of the Muslim people to make and abrogate Laws." It was because of the inability or unwillingness of the Muhammadan Power in Bengal to put aside the principle of blind subjection to the past—the rule of the dead—and to re-fashion their legal system in the light of the needs of the society which they had been ruling, that the British Government found it expedient gradually to substitute for the existing Law a penal code based in a large measure on that of England.

The Muhammadan Law, therefore, contained many principles fundamentally opposed to western ideas of justice, order and progress. It was based on conceptions of the State and of social relations, which had for the most part disappeared from European thought. It drew no clear-cut distinction between personal and public law. It embodied the principle that Law mainly exists to afford redress to the injured; it failed to emphasize the idea that crime is an offence, not merely against the individual, but against society. According to the Muhammadan persuasion crimes were divisible into two classes; those committed against Allah, such as adultery and drunkenness, and crimes against Man. Although, indeed, the latter were punished by the State, the object was rather to give satisfaction to the persons injured than to afford protection to others.

The law of murder, for example, needed radical alteration if life was to be made secure. Abu Hanifa, whose opinions were generally accepted by the Bengal Judges, had drawn a sharp distinction between the two kinds of homicide known by the terms *Amd*

(wilful murder) and *Shabih-amd* (culpable homicide not amounting to murder), although such distinction was not recognized by the Quran. The distinction was based on the method by which the crime was committed. If a man killed another by striking him with his fists, throwing him from the upper floors of a house, throwing him down a well or into a river, strangling him, or with a stick, stone, club, or any other weapon on which there was no iron and which would not draw blood, he was guilty only of shabih-amd, not of murder, and he could not be capitally punished.[1] A man was guilty of murder only if he used a *dah* (knife) or some other blood-drawing instrument, and was liable to be sentenced to death.[2] Persons guilty of shabih-amd were merely sentenced to pay the blood-fine to their victims' relatives if those relatives chose to accept it. Abu Hanifa, however, had declared that if a man repeatedly committed murder by strangling he might be executed.[3]

Abu Hanifa, who was born in the eightieth year of the Hejira, had never taken part in the administration of justice, though he had been greatly revered as a virtuous and scholarly theologian. It was said of him that he left his writings and opinions open to the correction of his disciples in so far as those opinions might be found to differ from the Holy Tradition; but although these disciples, Abu Yusuf and Muhammad, the former being Chief Justice at Baghdad, did, it was said, help to bring their master's doctrines into great renown, yet nevertheless they entirely differed with him regarding the punishment of homicide, laying down the more rational doctrine that if the intention of murder be proved, no distinction should be drawn with regard to the method employed.[4] Abu Yusuf's opinion, however, never came to supersede that of Abu Hanifa, and the important point we have to notice is that the latter's view was generally accepted and acted upon in Bengal at this time.[5]

In several other cases the Muhammadan Law which was administered in Bengal did not permit murderers to be executed.

[1] Bengal Rev. Cons., 28 Nov. 1788; 30 Dec. 1789.

[2] *Ibid.*

[3] *Ibid.*, 21 July 1790.

[4] *Ibid.*, 19 Aug. 1789; 15 July 1791. This information was given to Jonathan Duncan, the Company's Resident at Benares, by the Muhammadan Judges of the Benares Courts.

[5] *Ibid.*, 28 Nov. 1788; 19 Aug., 30 Dec. 1789. In a written communication the Ghazipur Judge refers to the "Hanifan legal writings, which are most prevalent, or in use, for the guidance of the rulers of the country of Hindostan."

Provided they were Muslims, neither fathers nor mothers suffered death for the murder of their children, but were fined; they were liable to be hanged only for murdering other people's children. Grandfathers and grandmothers enjoyed a similar immunity with respect to their grandchildren; so did a Master for the murder of his slave, or a man for the murder of his son-in-law, provided that his daughter was actually living with her husband at the time. Patricide or matricide, however, might be punished with death.[1]

Homicide was justifiable in the following cases: A woman might kill a man who persisted in carrying on an indecent conversation " with violence and ill-will "; a man using a dangerous weapon in the streets of a town during the night, or outside the town during the day, might legally be killed.[2] Under certain circumstances a man might kill his wife if he caught her in the act of adultery, and also her paramour; and he might slay a man who attempted to rape his wife or his slave-girl. The authorities who were followed in the Courts of Justice in Bengal differed somewhat on this matter. One Law Book laid down that a man might kill another who attempted to rape his wife or slave-girl. Another authority maintained that an adulterer might be slain provided that, first he " made a noise " to give the offender a chance to desist; second, the adulterer neither fled nor desisted on hearing the noise; third, the offender was a Mussulman; and fourth, the offender was seen in the very act. A third authority stated: " A man finding another with his wife, it is lawful for him to kill him; should he know that the fornicator will cease his attempt at his crying out, or frightening him with a weapon not mortal, he is not to slay him. Should he know that his death only will restrain him, it is permitted to slay him." A fourth authority emphasizes the necessity of producing witnesses to prove the act of fornication: " If a murderer shall state that he has slain any one on account of fornication, and the heirs of the slain shall deny this allegation, the murderer having no witnesses, his assertion being without testimony, shall be deemed inadmissible." [3] A man might slay a person caught in the act of robbing his house.[4]

[1] *Ibid.*, 30 Dec. 1789; 29 June 1792. [2] *Ibid.*

[3] Bengal Rev. Cons., 18 Feb. 1789; 30 Dec. 1789. A Tradition from Muhammad says: " Some one asked him, ' Oh, Prophet of God! Should I find any one with my wife, shall I leave him till I can get four witnesses?' The Prophet answered, ' Let them alone till you can get the four witnesses.' " (*Ibid.*)

[4] *Ibid.*, 30 Dec. 1789.

But by far the most important reason why murderers frequently escaped the death penalty was that provision of the Muhammadan Law which gave to the sons or next-of-kin the privilege of pardoning the murderer of their parents or kinsmen. This misplaced power of life and death made the fate of a murderer largely depend on the caprice, venality, or indifference of the deceased man's relatives.

In the first place, this power of pardon which was vested in the deceased's relations enabled Brahmins to commit murder with impunity, for hardly any Hindu prosecutor would willingly consent to the execution of a man of such a high caste. The result was that Brahmin murderers became alarmingly numerous.[1]

In the second place, this privilege of pardon gave rise to a serious danger—that of an accused being able to prevail upon an individual to swear in Court that he was a relative of the deceased, although the witness bore no relationship at all to the murderer's victim. For example, there was the case of Imam Bakhsh, who, finding his wife copulating with a stranger, murdered them both. The woman's sole relative was her mother. A person professing to be the deceased's mother appeared in Court and exercised her privilege of pardoning her "son-in-law." But doubts arose whether she really was his mother-in-law, for the accused was unable to give her name; he said that she had lived for the previous fourteen years in a certain village, whereas she declared that she had lived in a totally different locality; he stated that he had not seen his mother-in-law for five years, but she declared that she was present at his wedding, which took place only one year before the murder was committed. Eventually the prisoner confessed that through fear of his life he had given false information about his mother-in-law, for if the real person had been called, she might, from maternal anguish at the loss of her daughter, have demanded the death penalty.[2]

At Chittagong, three men were convicted of robbery and murder; the victim's grandson, in return for a small sum of money, saved them from the gallows. The pardon ran as follows: "I, ——, having now received the sum of rupees eighty, being monies that the above persons had taken, have hereby received satisfaction for the murder of my grandfather,

[1] Bengal Rev. Cons., 1 Dec. 1788; 25 March 1789; 11 Nov. 1789.
[2] Bengal Rev. (Judicial) Cons., 1 April 1791. The Board ordered him to be imprisoned for life.

and have of my own freewill and accord executed a release in favour of the said persons." [1] The Magistrate at Rangpur declared that a pardon could readily be bought for thirty rupees and often for even ten and twenty.[2]

If the heirs of a mortally wounded man pardoned the deed before the victim expired, the pardon could not be revoked and the murderer could not be executed.[3] If a man was murdered by several persons, and his heir pardoned one of them (he had the privilege of pardoning only one), the other could be executed.[4] If one of the heirs of a murdered man pardoned the murderer, the murderer could not be executed even though the other heirs demanded his death ; they were merely entitled to their share of the blood fine which the criminal paid.[5] There was the case of a man convicted of murder, who, having received a pardon, was ordered to make pecuniary compensation to the deceased's widow and two brothers. But, being unable to do so he offered his only son as a slave for life ; the widow accepted this offer, which the Court confirmed.[6] The Zamindar (and Magistrate) of Benares said that he had searched in vain for historical precedents of a Mughal Emperor having executed a murderer whom his victim's relatives had pardoned.[7]

The Quran had made no provision for the punishment of a murderer whose victim had died without heirs, so the lawyers were obliged to have recourse to the Traditions of the Prophet's Sayings, which the orthodox received as their oral Law with equal, or nearly equal, respect to the Quran itself. The Traditions laid down that the Ruler or the Judge was the representative of a murdered man dying without heirs. Abu Yusuf had said that homicide could be punished only by fine when there were no heirs, but Abu Hanifa, whose opinions were more venerated, had stated that the Ruler who was the heir, was to exact either capital punishment or a fine, as he pleased.[8]

What was the procedure when a murdered man was known to have left relatives, but none came forward to prosecute owing to their ignorance of the crime or to other circumstances ? In 1789 the Resident at Benares mentioned the case of a man who had killed his cousin, a widow of twenty-five, by cutting off her right

[1] Bengal Rev. Cons., 3 Dec. 1790.
[2] *Ibid.*
[3] *Ibid.*, 30 Dec. 1789.
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*, 20 Aug. 1790.
[7] *Ibid.*, 30 Dec. 1789.
[8] *Ibid.*, 10 Nov. 1790.

hand whilst she was in bed, because "she was a notorious whore and he was disgraced by her fornications." The death penalty could not be executed because the woman's relatives had not appeared in Court to demand it. At first the accused declared that the woman was his sister, but later he admitted that she was a more distant relation: if, that is, she had been his sister, he might have been acquitted, since the Law would have recognized that her disgraceful conduct more nearly affected his own reputation. He was to be kept in prison until her relatives had been found and until it had been ascertained whether they demanded capital punishment.[1] In that year, too, a murderer who had been in gaol for six years in somewhat similar circumstances, was about to be executed when the Resident at Benares reported the case to Government.[2]

Was it necessary to wait until infant heirs had grown up before a murderer could be capitally punished? Abu Hanifa maintained that the adult relatives could exact the death penalty without waiting for infant heirs to reach maturity. On the other hand, his disciples, Abu Yusuf and Muhammad, held that a murderer must be kept in prison until it had been ascertained whether all the heirs demanded capital punishment.[3] The Judge decided which authority he should accept in such circumstances.

The penal Code contained extraordinary disparities of punishment and approved the most terrible mutilations—much more cruel than those which, two hundred years previously, the Court of Star Chamber had inflicted in England. According to Abu Hanifa a highway robber was to be punished by having his hand and foot cut off on opposite sides, and then he was to be crucified alive and finally impaled. In the opinions of the lawyers Abu Yusuf and Muhammad, however, he was to be crucified only.[4] It does not appear whether these dreadful punishments were ever inflicted in Bengal at this time, but the punishment of mutilation was certainly frequently prescribed. "Many an offender," said the Magistrate at Jessore, "on apprehension is found to have already forfeited a limb (and sometimes even two) to the laws."[5] Another stated that in his District the hands and feet of thirteen

[1] Bengal Rev. Cons., 2 Sept. 1789; 2 June 1790. [2] *Ibid.*, 10 Nov. 1790.
[3] Bengal Rev. Jud. Cons., 29 Oct. 1792; Rev. Cons., 23 Dec. 1789.
[4] Bengal Rev. Jud. Cons., 15 July 1791.
[5] Bengal Rev. Cons., 3 Dec. 1790. The Chittagong Magistrate stated that a man had been sentenced to suffer impalement for dacoity about 1777. (Bengal Rev. Jud. Cons., 7 Dec. 1792.)

robbers had been recently cut off.[1] A third Magistrate declared that fifteen prisoners had just been sentenced to lose their right hand and left leg.[2] The method of inflicting the dreaded punishment of mutilation was particularly barbarous. The helpless victim was seized, thrown on to his back, and bound, hand and foot, to a plank; then he was gagged, so that his shrieks might not be heard by his fellow prisoners who were about to meet with the same fate. The executioner, a butcher, hacked off one hand by the joint of the wrist, and one foot by the ankle joint, with a blunt hatchet, the operation taking from six to eight minutes; the bleeding stumps were then immersed in a pot of boiling ghee in order that the flow of blood from the arteries might be stopped. Many of the wretches did not recover.[3] Noses as well as limbs might sometimes be cut off. Stoning to death was a punishment prescribed for Muslim fornicators.[4]

Murder was not the only crime which could be compounded with a fine or pardoned altogether. The Magistrate at Birbhum mentioned several cases of stabbing where the victim pardoned the criminal.[5] The Muhammadan Law, so ill designed in some respects to preserve human life, ensured its safety in one respect by the extraordinary provision that a host was legally responsible for the safety of his guest. If he were negligent and his guest died in his house, he had to pay the price of blood. At an entertainment given by a certain man on one occasion, one of his guests, overcome by intoxication, stayed the night in his host's house, but next morning he was found dead in the courtyard. It was likely that he had accidentally fallen from the upper floor, but nevertheless the law compelled the host to purge himself of the charge of murder by swearing repeatedly to his innocence, after which he was sentenced to pay the price of blood, a matter of some three thousand rupees. The Judge anxiously sought to repel the suggestion made by the Resident at Benares, that the sentence was oppressive.[6]

A man convicted of robbery could not be sentenced to receive

[1] *Ibid.*
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*, 28 Nov. 1788, 30 Dec. 1789.
[5] *Ibid.*, 3 Dec. 1790. There was also the case of a man who cut an old woman's throat, and, carrying off her money, left her, as he thought, either dead or dying. But she recovered and forgave the prisoner, although she died a natural death two months after the robbery. The Governor-General-in-Council ordered the man to be imprisoned for life. (Bengal Rev. Cons., 16 April 1790.)
[6] Bengal Rev. Jud. Cons., 14 Oct. 1791. The Governor-General-in-Council ordered the release of the prisoner.

the appropriate punishment unless the owner of the stolen goods appeared in Court to demand the infliction of punishment.[1] According to the Muhammadan Law an accomplice was not guilty of murder if he aided in the very act by holding the victim's hands whilst the other struck the fatal blow. The law of evidence was so unsatisfactory that the conviction of criminals was exceedingly difficult. In 1788 a man and his wife were arrested at Benares on a charge of theft. She made a full confession of their crime, but he denied having stolen the property and pretended that he had found it in a field. He did, however, admit that he had given a share of the property to several others to prevent them from carrying out their threat to inform against him. He could not be convicted because the Muhammadan Law required the evidence of two women and one man, or of two men, to convict a thief.[2] The evidence of two women, therefore, was regarded as equivalent to the evidence of one man. An accomplice in a capital case was not allowed to give evidence against the other accused. One man's testimony to the innocence of an accused was sufficient to secure, if not his acquittal, at any rate a mitigation of punishment, though other witnesses proved his guilt. A Muhammadan's word was accepted as the equivalent of that of two Hindus. No Muhammadan could be capitally convicted on the evidence of an infidel.[3] The Law completely precluded every possibility of a charge of rape being proved, and no woman could obtain redress for a violation of her person no matter how just was her complaint. A woman at Benares prosecuted a Brahmin on this charge. He had assaulted her whilst she was asleep; after committing the offence he fled, but she pursued him into the street, raised a cry against him, and eventually caught him. Two witnesses identified him, but at the trial they were not allowed to give evidence, and he was acquitted because the law required at least four witnesses to swear that they saw the accused in the very act of committing the assault. Similarly four witnesses were necessary to prove a charge of fornication; if two persons were found lying in bed together, they could be punished with thirty stripes, but the crime of fornication or adultery, which was punishable with stoning to death, could be proved only by four honourable witnesses who not merely saw the guilty persons under the same coverlet, but actually saw them in the

[1] Bengal Rev. Cons., 28 Nov. 1788. [2] *Ibid.*
[3] Bengal Public Letter to Court, 25 Aug 1792.

act.[1] Before a man could be punished with mutilation after being convicted of dacoity, it had to be proved that he had received as his share of the booty the sum of two rupees eight annas or its equivalent, so that, as one Magistrate declared, "by fifty or sixty people going in a gang, a very considerable property may be carried off without any one of them being punished otherwise than by stripes and confinement."[2] The Law still recognized slavery, and the number of slaves in Bengal was very considerable.[3] Even in Calcutta one often beheld in the bazaar a crowd of miserable creatures exposed for sale, and periodically there were to be seen boat-loads of slave children either stolen from, or in times of scarcity, sold by, their parents; they were auctioned in the town.[4] Hastings, indeed, had made a positive order forbidding the slave traffic, but the practice had been carried on continuously in defiance of his Government.

Though the Muhammadan Law embodied many principles which offended the feelings of Cornwallis and his assistants, we ought not to forget that in some respects it compared very favourably with English criminal Law, and that the English penal code was far from being in that state of perfection in which English people in the eighteenth century sometimes complacently imagined it to be; and that the British code still prescribed barbarous punishments and contained some glaring anomalies. In spite of some barbarities the Muhammadan Law was founded, as Hastings had declared, "on the most lenient principle and an abhorrence of bloodshed."[5] In England men were still liable to be hanged for stealing goods to the value of five shillings from a shop; in Bengal the death penalty for theft was unknown. Nor did the Muhammadan Law capitally punish the much graver crime of dacoity unless it was attended with murder. In prescribing the severest punishments for crimes against the person, it was in advance of the English criminal Law of the eighteenth century which punished offences against property with much greater severity. Like the English Law the Muslim code did not excuse the commission of a crime on the plea of intoxication, for drunkenness itself was regarded as criminal.[6] The Muhammadan Law, unlike the English, punished fornicators—with stoning to

[1] Bengal Rev. Cons., 30 Dec. 1789; 28 May 1790.
[2] *Ibid.*, 3 Dec. 1790.
[3] *Ross*, i, 547.
[4] *Works of Sir Wm. Jones*, vii, 16.
[5] Monckton Jones, *Hastings in Bengal*, p. 331.
[6] Bengal Rev. Cons., 28 May 1790, Rev. Jud. Cons., 29 April 1791.

death if they were Muslims, with one hundred stripes if they were Hindus [1]; opinions, however, will differ as to whether the recognition of fornication as a criminal offence was a point in favour of the Muhammadan Law.[2]

In England disparities of punishment existed as glaring as those in the Muhammadan code. If, for example, a criminal was seen stealing goods from a shop, he was transported; if he was not observed in the act he was hanged. In England it was a capital felony to steal goods valued at forty shillings from a vessel on a navigable river, but not from a vessel on a canal. In 1772 two persons were whipped round Covent Garden, one for stealing a bunch of radishes, the other for debauching and polluting his niece.[3]

And when the occasional barbarity of Muhammadan punishments is emphasized, one should remember, first, that the administration of the Law was more humane than the Law itself; and, second, that there were still in England over one hundred and sixty offences punishable with death. In England the Law which condemned murderesses to be burnt alive was not repealed until 1790, and the horrible sentence had been executed as late as 1726. The rebels of 1746 were hanged and disembowelled and their bodies were slashed in four quarters. And only half a century had elapsed since a prisoner, for refusing to plead on a capital charge, had been slowly pressed to death with iron weights.[4] It was not until 1817 that the practice of flogging half-naked women at the tail of a cart through the streets, was done away with.[4]

[1] Bengal Rev. Cons., 2 June 1790.

[2] Fornication was regarded as a much more serious crime than child murder. There was a case at Benares of two people carrying on an unlawful commerce. A child was born, which they intended to destroy by burying it, but they were intercepted. The infant, however, died from lack of sustenance and exposure. Both accused were sentenced to receive one hundred stripes for the fornication, but the Judge did not admit that they were liable to be punished for the child's death. The Governor-General-in-Council, to whom the Resident reported the case, although of opinion that the accused should be punished for causing the infant's death, allowed the acquittal to stand, and ordered the sentence of one hundred stripes to be remitted: as the Resident observed, under the British Government it was much too severe to be carried into execution, especially for the woman, who might hardly survive it. (Bengal Rev. Jud. Cons., 29 April 1791.) Hindu Law, too, prescribed an equally severe punishment for the crime of adultery. According to the Laws of Manu, an adulterer shall be put "on an iron bed well heated, under which the executioners shall throw logs continuously, till the sinful wretch be there burned to death."

[3] Lecky, *Hist. of England in the Eighteenth Century*, ii, 134–7; vii, 315–23 (1892 edition).

[4] *Ibid.*

CHAPTER III

JUDICIAL REFORMS, 1790–2

1. The Reforms of 3 December 1790

"THERE are few civilized countries," wrote Cornwallis in 1790, "in which the Criminal Law and the administration of it, are in so defective a state as in these Provinces." The extent of the evil had long been recognized. When, in 1787, Cornwallis vested the Collectors with magisterial powers, he acknowledged that the judicial system was notoriously faulty. For at least two years before the completion of his reform scheme, the situation had been receiving his anxious attention, but the pressure of other work, such as the settlement of the land revenues of Bengal, delayed the adoption of his plans until December 1790.[1]

On 3 December 1790 he recorded a long Minute, which fills 105 pages of the copy of the Consultations in the India Office Library, on the subject of criminal judicature. He drew up a body of Regulations which were considered by the members of Council, and, with one dissentient, the Code was approved and put into force.

First of all Cornwallis had to consider the question whether it was within the competence of his Government to interfere with matters pertaining to the Nizamat, which was the sole branch of government left to the Nawab. Searching for precedents, he found that Hastings at the very beginning of his Governorship

[1] His letter to Dundas dated 8 March 1789 shows that he had already decided on what lines his plan of reform should proceed. He wrote: "The administration of criminal justice is oppressive, unjust and beyond measure corrupt, and I see no remedy but by appointing three or four Judges for Bengal and Bihar from the Company's senior servants, who should go the circuit twice a year and superintend the trials, and be particularly careful that the sentences should be executed on those who are found guilty, and that the innocent should be released. Although this will be attended with a considerable addition of expense, yet, whilst we call ourselves sovereigns of the country, we cannot leave the lives, liberty and property of our subjects unprotected" (Melville Papers)

had considered the matter and had come to the conclusion that interference was both right and expedient. "A power should exist," said Hastings, "to revise the proceedings of the Criminal Courts, and where the letter of the Law was clearly repugnant to the principles of good government and common sense, to apply such a remedy as the case might require."[1] He believed that it would be morally wrong, however, to deprive the people of Bengal of the protection of their own Laws, and that as few changes as possible should be made in the penal code. "If, he said, the Muhammadan system of jurisprudence "shall be found to contain nothing hurtful to the authority of Government or to the interests of society, and is consonant to the ideas, manners and inclinations of the people for whose use it is intended, I presume that on these grounds it will be preferable to any which even a superior wisdom could substitute in its room."[2] In accordance with this reasonable and enlightened principle, he had constituted his Judicial Code of August 1772 on as close an adherence as was possible to the ancient usages and institutions of the Country Government.[3] (Although in theory the Company possessed only the right of collecting and enjoying the revenues of Bengal, Hastings had determined to pursue the bold policy of making the Company's sovereignty open and avowed; the policy of taking full responsibility for the government of the country.) "Although," he wrote, "we propose to leave the Nazim the final judge in all criminal cases, and the officers of his Court to proceed according to their own Laws, forms and opinions, independent of the control of this Government, yet many cases may happen in which an invariable observance of this rule may prove of dangerous consequence to the power by which the Government of this country is held, and to the peace and security of the inhabitants. Wherever such cases happen the remedy can only be obtained from those in whom the sovereign power exists. It is on these that the inhabitants depend for their protection and for the redress of all their grievances, and they have a right to the accomplishment of their expectation of which no treaties nor casuistical distinctions deprive them. If, therefore, the powers of the Nizamat cannot answer these salutary purposes or by an abuse of them, which is too much to be apprehended from the

[1] Bengal Rev. Cons., 3 Aug. 1773; 31 Aug. 1773. Quoted by Cornwallis in his Minute of 3 Dec. 1790 (Rev. Cons.).

[2] Gleig, *Memoirs of the Life of Hastings*, i, 399; n. 20.

[3] Monckton Jones, *op. cit.*, p. 311.

present reduced state of the Nizam, and the little interest he has in the general welfare of the country, shall become hurtful to it, I conceive it to be strictly conformable to justice and reason to interpose the authority or influence of the Company, who as Diwan have an interest in the welfare of the country and as the governing power have equally a right and obligation to maintain it." [1] In August 1773 the Board had further considered the question whether it should not legislate to modify the Muhammadan Laws where they tended to facilitate the escape of criminals from punishment. It suggested that, in view of the delicacy and importance of the subject, the President, who was touring the Provinces at the time, should consult Muhammad Riza Khan at Murshidabad and ascertain whether he would be willing to reform the Law by his own warrant as Naib Nazim.[2] Hastings, however, persuaded the Nawab to appoint Sadr-ul-Haq Khan, the President of the Nizamat Adalat, to take the Nawab's place in signing warrants for the execution of the sentences of the Nizamat Adalat, so that there might no longer be any delay in transmitting the Court's fatwas to Murshidabad for the Nawab's signature. The appointment, said Hastings, would also give the Supreme Council an entire control over the administration of criminal justice, and would enable the Board both to revise sentences passed by the Nizamat Adalat and also "to correct the imperfections of the Muhammadan Law by the warrants of the Nazim, which will now pass under their [the Board's] immediate inspection." [3] The Council requested the President to superintend Sadr-ul-Haq Khan in the exercise of his office "as well in revising sentences of the Adalat as in passing the warrants and affixing the seal." [3]

So Hastings interfered in a very definite way with the functions of the Nawab. Not only did he bring the Nizamat Adalat under the control of the Government, but, by a legislative act, he amended the punishment which the Muhammadan Law prescribed for the crime of dacoity.[4] Further, it appears from the Register of the proceedings of the Nizamat Adalat during the period when the Court was under the superintendence of Hastings, that the Court frequently revised sentences passed by the

[1] *Ibid.*, p. 332. [2] Bengal Rev. Cons., 31 Aug. 1773.
[3] *Ibid.*, 31 Aug. 1773.
[4] Not merely were dacoits to be executed, but the village in which they lived was to be fined, and their families were to become the slaves of the State. (Bengal Letter to Court, 3 Nov. 1772.)

mufassal Judges which, if upheld, would have allowed criminals to escape punishment. The final order passed in cases of homicide by strangling or drowning or striking with a weapon which did not draw blood, was generally death.[1]

Cornwallis, therefore, relied on the precedent set by Hastings, whose reconstruction of the judicial system had been implicitly, if not explicitly, approved by the British Parliament in 1773, when the Regulating Act was passed. For its seventh section, Cornwallis observed, "vests the ordering, management and government of all the territorial acquisitions and revenues in the kingdoms of Bengal, Bihar and Orissa in the Governor-General and Council, for such time as the territorial acquisitions and revenues shall remain in the possession of the said Company . . . and as it was then before the Legislature that the President and Council had interposed and altered the Criminal Law of this country, such alteration, and all future necessary amendment thereof, appear by the above clause to be legally sanctioned and authorized."[2] John Shore, too, had long since expressed the opinion that the Board would do well to legislate on this question. "I do not think it would be unbecoming the dignity or humanity of this Government to procure some alteration in particular punishments which are a disgrace to humanity," he said. "I allude in particular to the cutting off limbs and impaling, the very mention of which makes nature shudder."[3] Also the Court of Directors urged the Supreme Council in 1786 to use its influence with the Naib Nazim to secure the abolition of barbarous punishments.[4]

Even before the publication of the Regulations of 3 December 1790 the Governor-General-in-Council had occasionally revised sentences passed by the Naib Nazim, and also, with much greater frequency, had interfered with the administration of justice in the zamindari of Benares, which, however, was on a different footing from Bengal, in that it had been ceded to the Company by the Nawab of Oudh in 1775.

In September 1789, for example, the Hijili Magistrate reported that the Naib Nazim had sentenced a number of dacoits to be imprisoned until they could give ample security for their future good behaviour. But since there was little probability of their

[1] It is interesting to note that sentences of amputation were in two cases allowed to stand, in November 1773. (*Bengal, Past and Present*, xiii, 213.)
[2] Bengal Rev. Cons., 3 Dec. 1790.
[3] *Ibid.*, 18 May 1785.
[4] Separate General Letter from Court, 12 April 1786.

being able to induce anyone to stand surety for them, the sentence was practically equivalent to imprisonment for life. The Board decided that only one prisoner was to remain in confinement indefinitely; others were to be transported to Penang; others to be released after a certain period.[1] Another Magistrate declared that he had brought the question of the Muhammadan Law of murder to the notice of the Governor-General-in-Council so frequently, and, apparently, so ineffectually, that he at last refrained from writing any more letters on the subject. One case which came up, however, was so peculiar that he felt compelled to report the circumstances. Three brothers were about to share their father's inheritance; to obtain a bigger share, one brother murdered another brother, and the remaining brother pardoned the murderer, either because he too profited by the murder, or because, having lost one brother he did not want to lose the other and bring further disgrace on the family. The Board passed orders that the criminal, instead of being released, should be transported to Penang.[2] In January 1790 the Board interfered with a number of sentences of mutilation which the Naib Nazim had imposed. Three dacoits were to have the right hand and left foot cut off; a thief to have his right hand cut off if the complainant chose, but otherwise to receive thirty-nine strokes of a kora and four months' imprisonment; whilst another thief was also to lose his hand if the complainant wished it, but otherwise to receive the same amount of flogging and to be imprisoned for an indefinite period. The Supreme Council ordered these sentences to be suspended and decided that more appropriate punishment should be substituted.[3] Two months later the Board commuted the sentence of mutilation passed on fifteen other prisoners, for either a term of imprisonment or transportation to Penang.[4] In September 1790 the Board dismissed one of the Judges for corrupt practices, following a complaint by the District Magistrate; the Naib Nazim immediately appointed a new one.[5]

On 28 November 1788 the Governor-General-in-Council authorized the Company's Resident at Benares to revise the proceedings of the Raja's Judges, and to refer unsatisfactory sentences to the Board. His instructions were as follows: "In

[1] Bengal Rev. Cons., 25 Sept., 28 Oct. 1789. [2] *Ibid.*, 11 Nov. 1789.
[3] *Ibid.*, 20 Jan. 1790. [4] *Ibid.*, 31 March 1790.
[5] *Ibid.*, 3 Dec. 1790.

all criminal cases now under trial in any of the Courts of the zamindari of Benares, or which may come before them in future, should it appear to you from the evidence produced that the prisoner is guilty of the crime with which he or she may be charged, and that by a strict adherence to the prescriptions and formalities of the Law . . . such prisoner would escape the merited punishment, we authorize you to pass such sentences upon all persons so convicted, as you may deem consistent with the nature of their crimes and conducive to the ends of public justice, reporting to us every instance in which you may take upon yourself the exercise of this authority either before or after the execution of the sentence according as you may judge necessary.

" We desire, however, that the powers thus delegated to you be not considered as extending to punishments affecting life or limb, the infliction of which we can in no case admit of but where it is expressly authorized by the Muhammadan Law, nor to sentences of perpetual imprisonment, for the passing of which in cases where it may be judged necessary, you will apply for our previous sanction." [1]

The Resident's letters show that the Board interfered most frequently with sentences in murder cases. Murderers who would have escaped the death penalty either because their crimes were non-capital according to the doctrines of Abu Hanifa, or because they had been pardoned by their victims' relatives, were usually either hanged or imprisoned for life. Exceptions were, however, made in the case of Brahmins, to avoid offending the religious susceptibilities of the Hindus. On 4 February 1789 the Board revoked the sentence of death passed on a Brahmin murderer at Benares, and directed the Resident to inflict on him " the most severe and exemplary punishment which the Hindu Law allows to be inflicted " on persons of that caste. The Supreme Council added : " We desire, however, that you will assemble the principal pandits of Benares in your cutchery and publicly declare to them that we have remitted the sentence of capital punishment . . . from a regard to their religious persuasions, and under the hopes that no instance will occur in future of a Brahmin being convicted of so horrid a crime, but as the exempting any description of persons whosoever found guilty of murder would, if adopted as a general principle, be injurious to

[1] Bengal Rev. Cons., 28 Nov. 1788.

the rights of a large proportion of the inhabitants of the British dominions in Bengal, now composed of people of various nations and religions, and whose persons and properties this Government is bound to protect, that they are not to expect a repetition of this lenity in any similar instance which may hereafter occur, but that in future, should any Brahmin be convicted of the crime of murder, he will be liable to suffer the punishment of death, in conformity to the established usages of the Muhammadan Government." [1]

This threat, however, was never acted upon, and Brahmin murderers were either sentenced to perpetual imprisonment, or transported for life to Penang, or punished according to Hindu Law: that is, their property was confiscated, they were branded on the forehead with the figure of a headless man, their head was shaved, and, set upon an ass, they were expelled from the Province.[2] In September 1790 the Resident suggested that if Brahmins convicted of murder were transported to Penang " or to any other place where their relations would never more hear of them, the terror inspired by such a real banishment would, I am persuaded, soon have the happiest consequences." [3] Accordingly he was authorized to give public warning that Brahmin murderers would in future be liable to be transported for life to Penang.[3]

Pardoned murderers were generally sentenced to imprisonment for life.[4] In one case, where the heirs of a murdered man were not to be found, their residence being in a distant Province, the Board did not order the trial to proceed and sentence to be pronounced in their absence, but informed the Resident that the man must be kept in confinement until the trial could be determined according to the Muhammadan Law.[4]

In December 1790 Cornwallis removed some of the worst defects in the Muhammadan Law. In murder cases he laid down the rule that the doctrines of Abu Yusuf and Muhammad, not the doctrines of Abu Hanifa, should henceforth be followed: that is, that motive, not method, should determine the sentence. The relatives of a murdered man were deprived of their power to pardon the criminal, and the Law was to take its course.[5]

[1] *Ibid.*, 4 Feb. 1789.
[2] *Ibid.*, 25 March 1789; 21 July 1790.
[3] *Ibid.*, 8 Oct. 1790. Government's orders to this effect were published at Benares on 28 Dec. 1790. (Rev. Jud. Cons., 7 Jan. 1791.)
[4] *Ibid.*, 2 June 1790.
[5] *Ibid.*, 3 Dec. 1790.

These improvements, however, fell far short of what Cornwallis desired to effect. At this time he felt disinclined to go further, and wished to interfere as little as possible with the religious prejudices of the people. "We are of opinion," he said, "that notwithstanding its many defects, no material alterations, except those already adopted, should be attempted, until the minds of the people, by a more intimate acquaintance with the enlightened principles of European policy, are prepared for the reception of other laws more consonant to reason and natural justice." [1] "A regard to the religious prejudices of the Muhammadans," he wrote on another occasion, "will probably prove an insurmountable obstacle to our making those alterations in the law which the good of the community requires. But if we cannot introduce a system of jurisprudence as perfect as might be wished, it is our interest as rulers of the country, and duty we owe to our subjects, to see that the Law, as it exists, is duly administered; that the evils resulting from the maladministration of it may not be superadded to those which are consequent of its inherent defects." [2]

Cornwallis declared that he could no longer leave the Criminal Courts in Indian hands. Muhammad Riza Khan, therefore, was deprived of his office, and the Nizamat Adalat, which was henceforth to be composed of the Governor-General and members of the Supreme Council, assisted by the Chief Kazi of the Province and two Muftis, was again removed from Murshidabad to Calcutta. It was to be the duty of these Indian officials to meet at least three times a week to consider the Persian copy of the proceedings in all trials referred from the District Courts for the final decision of the Nizamat Adalat, and to append to these documents a statement declaring whether the Judge of the lower Court had pronounced a proper sentence, consistent with the evidence and conformable to Muslim Law.

The Court itself was to meet at least once a week. It was to "take cognisance of all matters relating to the administration of

[1] Bengal Public Letter to Court, 10 Aug. 1791.

[2] Bengal Rev. Cons., 3 Dec. 1790. Dundas had warned him of the necessity of adapting his laws and institutions to the actual conditions of society. He wrote on 8 Aug. 1789: "Your wishes for the improvement of the criminal justice of the country were worthy of yourself and of infinite moment. In every system you recommend for that purpose, you of course will never lose sight of the religion, manners and even prejudices of the natives. Under that reserve, I do not think it possible that you can suggest anything to which I shall not be disposed to subscribe." (Melville Papers.)

justice in criminal cases, and the Police of the country, and submit such propositions as may appear to them calculated for the better regulation of the same, for the consideration and sanction of the Governor-General-in-Council." After reviewing the record of the proceedings of the subordinate Court, the sentence pronounced by the law officers of that Court, and the opinions of the Chief Kazi and Muftis, the Nizamat Adalat was to pass the final sentence. The prerogative of mercy was to be exercised, not by the Court, but by the Governor-General-in-Council. The executive business of the Court was to be conducted by an official under the designation of "Register to the Nizamat Adalat." Decisions were to be regulated by the Muhammadan Law (with the exceptions above stated), and the Magistrates were to see that each sentence was carried out.

This reorganization of the superior Court, however, would have been of comparatively little value had the District Courts too not been reformed. Cornwallis decided to abolish the existing Faujdari Courts over which Indian Judges presided, and to substitute four Provincial Courts of Circuit, three for Bengal, and one for Bihar. Two Judges, appointed from the ranks of the Company's service, were to sit in each Court, and they were to be assisted by a Kazi and Mufti, removable from their posts only on the orders of the Governor-General-in-Council. The executive business of each Court was to be entrusted to a Register (also a covenanted servant) and other subordinate officials. There were to be two gaol deliveries annually, each Court commencing on 1 March and 1 October a circuit of the Districts which collectively formed the Division. The Courts were to proceed to each District headquarters, and after completing the circuit, they were to fix their residence at the Divisional headquarters (Calcutta, Dacca, Murshidabad and Patna), and try prisoners committed by the city Magistrate. The procedure which was to be observed was carefully regulated:

"The charge against the prisoner, his confession (which is always to be received with circumspection and tenderness), the evidence in favour of the prosecution, if he plead not guilty, and that which the prisoner may have to adduce, including his defence, being all heard and gone through in his presence and in that of the Kazi and Mufti of the Court, the Kazi and Mufti are then to write at the bottom of the record of the proceedings held on the trial, the fatwa or law, as applicable to the circumstances of

the case, and to attest the same with their seals and signatures. The Judges of the Court shall attentively consider such fatwa, and if it shall appear to them that the same is consonant to natural justice, and at the same time in conformity to the Muhammadan Law, under the already proposed modifications, they are then to approve thereof, in the terms of the said fatwa, and to pass sentence and to issue their warrant to the Magistrate for the same to be executed without further reference. . . ." If the Judges disapproved of the fatwa they were to refer the case to the Nizamat Adalat.

"European and British" subjects were not amenable to these new Criminal Courts, but to the Supreme Court of Judicature at Calcutta. The Judges and their Indian assistants were given liberal allowances, at increased cost to the Company. But, declared Cornwallis, "it has been my constant object to make every reduction of the public establishments that could be effected with propriety, and I need not remark that the strongest conviction of the necessity of these arrangements could alone induce me to propose any addition to them at the present period, when our resources are required for the support of a foreign war."

The Regulations of 3 December 1790 were approved by the members of Council, with one exception. Recording his dissent in a short Minute, Speke declared that his objections to the proposed changes were insurmountable, from the point of view of expediency as well as justice. "I have already taken occasion," he said, "to inform the Governor-General that I felt it absolutely impossible to give my assent to the institution of the Court of Nizamat Adalat as described in his Lordship's Plan of Regulations for the Faujdari Department. . . . I consider it as an assumption, *in fact*, of the Sovereign Power in the fullest sense, not merely that of criminal jurisdiction, but of legislation.

"Whether I advert to myself in the capacity of a servant of the East India Company, with the duties and powers annexed to my station, or generally as a British subject, I cannot remove from my mind a conviction, that the Court proposed to be constituted will not possess even a colourable jurisdiction, and therefore that if I acted as one of it, I should in every case where a criminal's execution was consequent on its decision or acquiescence, be guilty of taking away life without competent authority." He

did believe, however, that the reforms were calculated to improve the administration of justice.[1]

2. Further Judicial Reforms, 1791–2

It yet remained to be seen how the new system would work. Cornwallis had not only put the judiciary into the hands of Company's servants, but had, in effect, assumed the legislative functions of the Nawab. He had swept away an entire structure and had assumed the power of altering at will the important arrangements he had just made.

The first questions to be dealt with were the arrears of faujdari business, and the cases of prisoners whom the Naib Nazim had ordered to be confined "during pleasure." It appeared that some had been found guilty of only trivial offences, whilst others had been convicted of very grave crimes. Muhammad Riza Khan was now requested to explain the principles upon which these sentences had been determined, and to explain whether imprisonment during pleasure meant imprisonment for life or only temporary imprisonment. If it meant temporary imprisonment, the Magistrates would need to know by what rule the term of each prisoner's confinement was to be fixed.[2]

The Naib Nazim's reply was unsatisfactory. He gave several examples of cases where a sentence of imprisonment during pleasure would be passed. A person charged with highway robbery, who withdrew a written confession of guilt; a person known to be a notorious criminal, charged with robbery, though there was no proof of his guilt; a person charged with some serious offence, which merited a punishment slightly less severe than perpetual imprisonment: such individuals would be sentenced to imprisonment during pleasure. If their innocence were eventually established, or if their behaviour after a long period of confinement indicated repentance and contrition, or if the prisoners were dying or their health permanently destroyed, so that they could never again disturb society by their crimes, then they might possibly be released. In this answer, as Cornwallis

[1] Bengal Rev. Cons., 3 Dec. 1790. Cornwallis regarded Speke as a well-meaning man, but thoroughly incompetent and wrong-headed. "I shall ever consider the day of his nomination as a very unfortunate one for the administration of the British affairs in India." (To Dundas, 12 Nov. 1790.) He and Stuart, declared Cornwallis, were utterly incapable of giving the smallest assistance, and their interference, even when kindly meant, always tended to obstruct business. (To Dundas, 9 Aug. 1790. Melville Papers.) And see p. 11.

[2] Bengal Rev. Jud. Cons., 15 April 1791.

declared, it was easy "to trace the causes of the many abuses committed under the late system." "It is by no means our wish," he added, "to cast any imputation on the Nawab Muhammad Riza Khan, whose character we respect. But there can be little doubt that the officers of the subordinate Courts established in the several Districts in which the criminals were tried, often availed themselves of this part of the law to screen the most notorious offenders from punishment."[1]

The judicial reforms had been in operation only a short time when Cornwallis found it expedient to make use of the legislative powers which he had assumed in December 1790. Certain imperfections in the Criminal Law were discovered, and certain circumstances previously unforeseen had to be provided for. Cases were reported by the Circuit Judges to the Nizamat Adalat in which murderers had escaped punishment simply because no one had come forward to prosecute them. On 8 April 1791 the Supreme Council resolved that in case of the death or absence of the prosecutor, the prosecution should be carried on by the Register to the Court of Circuit.[2] On 15 April 1791 it was decided that the punishment of mutilation should not be inflicted on any criminal in future, and that criminals sentenced by the Courts of Circuit to lose two limbs or one limb, should, instead of being mutilated, be imprisoned for fourteen and seven years, respectively.[3] Further cases of Brahmin murderers being pardoned by their victims' relatives came before the Judges during the early months of 1791, but since these crimes had been committed before the publication of the Regulation of December 1790 which made such persons liable to be transported to Prince of Wales' Island, these men were sentenced to perpetual imprisonment with hard labour.

In April 1792 the law of evidence was improved, and it was made possible for the death sentence to be passed on Mussulmans convicted of murder on the evidence of non-Mussulmans.[4]

[1] Bengal Rev. Jud. Cons., 6 May 1791; Bengal Public Letter to Court, 10 Aug. 1791.

[2] *Ibid.*, 8 April 1791. This Regulation did not meet a case in which a prosecutor was present in Court but, being prevailed upon by the murderer by corrupt or other means, refused to prosecute. The Muhammadan law officers of the Nizamat Adalat declared that in such a situation the State could not legally compel a murdered man's heirs to prosecute, and that, except in cases of great notoriety, the accused must be set at liberty. In April 1792 a Regulation was made whereby a refusal to prosecute was no longer to interfere with the course of justice. (Bengal Rev. Jud. Cons., 13 April 1792.)

[3] *Ibid.*, 15 April 1791.

[4] *Ibid.*, 27 April 1792.

It soon became apparent that the four Courts of Circuit were unable to cope with the business which came before them. The congestion was due to the inadequacy of the judicial powers of the Magistrates, who were not permitted to deal with any offences except petty assaults, etc. There was no way of disposing of the vast number of trivial cases which accumulated monthly, and it frequently happened that, before being brought to trial, prisoners suffered a longer term of imprisonment than was prescribed after conviction. Nor were the accused the only sufferers. Witnesses had to put up with much inconvenience. In the first place, they had to appear before the Magistrate, and sometimes also before the thanadar, or police officer; then their evidence had to be repeated in the Court of Circuit. This double or even triple compulsory attendance, which sometimes involved journeying for several days, seriously interfered with their daily work, and was a source of expense and hardship.

In February 1792, therefore, the Magistrates were authorized to try all cases of petty theft except such as were committed by notorious criminals.[1] And, to give relief to witnesses and prosecutors, who were often deterred by poverty from incurring the expense of appearing before the Court of Circuit (a circumstance which often led to the acquittal of criminals), the Governor-General-in-Council, on 14 September 1792, made a Regulation directing Magistrates to pay witnesses who appeared to be in need of financial assistance, a daily allowance of two annas whilst attending the Circuit Courts, and a small travelling allowance. It should be remembered that nothing of this kind had been done in England, and that in this respect the Government of Bengal was more progressive, in helping the poor who were called upon to sacrifice time and money in the performance of public duties.[2]

The same enlightened spirit of reform is reflected in another Regulation for assisting prisoners discharged from gaol. After a long period of confinement, many, from want of immediate support and from the impossibility of obtaining employment, were compelled to return to their criminal habits. In July 1792 it was ordained for their relief that a small pecuniary allowance, not exceeding five rupees, but sufficient for a month's subsistence, should be made upon his discharge to every needy prisoner who

[1] *Ibid*, 24 Feb. 1792; Bengal Public Letter to Court, 10 March 1792.
[2] Bengal Rev. Jud. Cons., 4 May, 14 Sept 1792, Bengal Revenue Letter to Court, 12 Dec. 1792.

had served a sentence of six months or upwards.[1] This Regulation shows how rapidly the humanitarian spirit was extending in Bengal. It was not confined to the Governor-General and Council, for this and other Regulations were primarily suggested by the Magistrates and Judges who were scattered through the Provinces. In England, despite the labours of the prison reformer, John Howard, no such enlightened legislation had yet been even considered by the governing class from which Cornwallis sprang.

Another manifestation of the same spirit deserves notice. The Senior Judge of the Dacca Court of Circuit urged Government to give a greater measure of protection to prisoners on trial. Magistrates, he said, should be "directed to afford every prisoner made over for trial the amplest assistance in procuring the attendance of all such persons as the prisoner wished to call. . . . For it is beyond all doubt that a wretch once flung into gaol and in irons is deprived of every means to defend himself against his accuser; he is then in most cases even deserted by his friends and family." He considered that Government should bear the expense of procuring the necessary evidence for the defence.[2]

Another important reform was the abolition of the practice of attaching the property of prisoners awaiting trial. If they were convicted, their property was sold; if acquitted, it was restored. It was the practice to employ professional informers to point out to the police the haunts of notorious criminals, and these men were rewarded from the proceeds of the sale of the attached property. In November 1791 this practice, which was so liable to abuse, and which bore hardly not only upon the prisoner but also upon his relatives, was stopped.[3]

Cornwallis was favourably impressed with the working of the new Courts of Justice. In February 1793 he declared that "the most happy effects have already been felt from this system." The Judges' quarterly reports to the Nizamat Adalat were equally favourable. "The present system," said one of the Patna Judges, "must in our opinion be considered by the natives as a blessing to their country, particularly when compared to the former defective and weak state of the criminal jurisdiction; they are now not only sure of speedy justice, but an impartial administration equally to all ranks, and the indigent are now

[1] Bengal Rev. Jud Cons., 13 July 1792. [2] *Ibid.*, 21 Sept. 1792.
[3] *Ibid.*, 4 May 1792.

as certain of justice as the opulent, and of no distinction being made in inflicting of punishment when either are proved to be deserving of it.[1] In 1792 the Calcutta Circuit Court stated that it tried 663 prisoners on its first circuit, and 331 on its second, a decrease which the Judges attributed "partly to the heavy arrears at some stations when the change of system took place, the greater period allowed for prisoners to accumulate at others, and perhaps more than either of these causes, from the fear and dread which, we are informed and believe, pervades the whole country, now the Courts of Circuit are established; or, in other words, to the effect of speedy and regular trials in the form prescribed by the Regulations; to the impossibility of escaping by any corrupt means if guilty, and the certainty of instant punishment upon conviction." Commenting on the Judges' quarterly statements the Governor-General-in-Council wrote, in March 1792, "It is our opinion that the institution of the Courts of Circuit . . . have operated towards the prevention of crimes to as great a degree as could have been expected in so short a period."[2] The Senior Judge of the Dacca Court declared that among other advantages which had resulted from the abolition of the late Naib Nazim's authority, criminals no longer escaped punishment through the venality of the officers of the Criminal Courts, that they no longer lingered in gaol for an indefinite period, and that they were no longer detained for any considerable time before being brought to trial; also that the crime of murder had decreased, since it was now almost invariably punished with death.[3]

The system was yet by no means perfect, but the most glaring abuses in the old order of things became a thing of the past, and a great and salutary reform of the administration of criminal justice had been effected.

[1] *Ibid.*, 25 Jan. 1793.
[2] *Ibid.*, 21 Sept. 1792; Bengal Public Letter to Court, 10 March 1792.
[3] Bengal Rev. Jud. Cons., 21 Sept. 1792.

CHAPTER IV

THE ADMINISTRATION OF CIVIL JUSTICE, 1786-92

ALTHOUGH the East India Company had obtained the Diwani, or right of collecting and administering the revenues of the Provinces of Bengal, Bihar and Orissa as early as the year 1765, it was not until 1772 that Hastings, at the beginning of his Governorship, was able to accept those responsibilities for the administration of civil justice which the Company had previously neglected, but which, according to Indian usage and tradition, were inherent in the Diwani. In that year, however, Hastings established in each District a Court of Justice for the trial of civil causes, under the presidency of the Collector, who was attended by Indian officials including the provincial diwan, appointed by the President-in-Council.[1] A Supreme Civil Court, the Sadr Diwani Adalat, was erected at Calcutta under the presidency of a covenanted servant appointed by the Board, the original arrangement whereby a member of Council was to preside, being changed.[2] The President was assisted by Indian officials, especially the Diwan of the Khalsa and the Head Kanungo. In both the District and Central Court Indian law (Hindu and Muhammadan) was administered. In 1774, however, the Sadr Diwani ceased to function on account of differences of opinion with the Supreme Court of Judicature, and it was not revived until April 1780.[3]

On 23 November 1773, in accordance with the orders of the Court of Directors, the Board decided to recall the Collectors from the Districts, and to establish in their place six Provincial Councils of Revenue, at Calcutta, Burdwan, Murshidabad, Dacca, Dinajpur [4] and Patna. These Revenue Councils exer-

[1] Proc. of Com. of Circuit at Kasimbazar, 15 Aug. 1772.
[2] Bengal Rev. Cons., 15 Dec. 1772; 29 Dec. 1785.
[3] *Ibid.*, 29 Dec. 1785.
[4] The Provincial Council of Dinajpur became localized at Purnia, and in a few years' time became known as the Provincial Council of Purnia. (Bengal District Records, *Rangpur*, vol. ii, p. ii.)

cised civil jurisdiction as well as revenue administration, and when sitting in its judicial capacity each Council was superintended in monthly rotation by one of its members. Revenue collection in the Districts other than the seat of the Provincial Councils of Revenue, was entrusted to Indian officials, Naibs, appointed by, and responsible to, the Provincial Revenue Councils, and these Naibs replaced the Collectors as Presidents of the District Civil Courts, except, apparently, at Chittagong and Bhagalpur.[1] Appeals from the Naib's decision were allowed in all cases to the six Divisional Civil Courts.

On 22 July 1777 Hastings, who had always disliked the Revenue Councils, took the first step in the direction of the separation of revenue administration from civil jurisdiction, by appointing a covenanted servant, unconnected with the Provincial Council of Revenue, to take charge of the Diwani Adalat at Dacca.[2] "It has long been my wish," wrote Hastings on that occasion, "that some general Regulation might take place by which the Diwani Courts might be put upon a more proper footing, and I did hope that the first orders from the Company received in the course of this year would have authorized and instructed us fully on this point. They have been silent upon it. I mean therefore at some other time, and that not distant, to propose such alterations as I think are indispensably necessary."[3] Three years later, Hastings was in a position to effect the reforms which had long been planned. On 28 March 1780 the Governor-General-in-Council decided to appoint a covenanted servant to preside over the remaining five Divisional Diwani Adalats (that is, at Calcutta, Murshidabad, Burdwan, Purnia and Patna) and the new Judges, or Superintendents, as they were styled, were to be entirely independent of the Provincial Revenue Councils at those stations. Further, a distinction was drawn not merely between revenue and

[1] Bengal Rev. Cons., 23 Nov. 1773; 29 Dec. 1785.

[2] *Ibid.*, 22 July 1777; 29 Dec. 1785.

[3] *Ibid.* Francis agreed with Hastings that the Civil Judge ought to be independent of the Revenue Council, and was prepared to support an extension of the change made in 1777, to all the Revenue Councils, provided that no additional expenditure was incurred. He considered that the number of Councillors could be reduced by one, and that the individual whose office was thereby abolished could be appointed Civil Judge. "I think that the number of which the Councils consist, so far from expediting business, serves no purpose but to embarrass and delay it." Barwell, who supported Hastings without any such reservation, maintained that the Company's orders prevented a reduction of the number of the members of the Provincial Councils (each consisted of a Chief and four Councillors). Clavering thought that a decision should be postponed for further consideration.

judicial administration, but also between causes relating to the revenue and other civil suits. The six Provincial Councils were to remain Courts of Justice for the trial and decision of causes relating to the public revenue; the new Diwani Courts were to try all other civil suits.[1]

It was soon discovered that the jurisdiction of these new Diwani Courts was too extensive, so on 6 April 1781 the number was increased from six to eighteen, each under the charge of a covenanted servant who was to be styled Judge instead of Superintendent. The six Provincial Councils of Revenue were abolished, and Collectors were re-appointed to take charge of the Districts. The Judges were wholly unconnected with revenue administration, except in the four frontier Districts of Chittra, Bhagalpur, Chittagong and Rangpur, where for purely local reasons the offices of Judge and Collector were combined. The Judges were also given magisterial powers of arrest and commitment; they took the place of the Indian Magistrates whom Muhammad Riza Khan had appointed in 1775, and who had not proved at all satisfactory.

At this time also (April 1780) the Sadr Diwani Adalat was re-established under the immediate authority of the Governor-General and Council, but since, owing to the multiplicity of business which the Board had to transact, the members of Council never actually sat as a Court, the Board resolved on 24 October 1780 that a Judge appointed by themselves should preside over the Court.[2] The Chief Justice of the Supreme Court of Judicature, Sir Elijah Impey, was nominated; he held office until 14 August 1782, when he was recalled home. For the guidance of the District Judges, who had little, if any, legal experience, he revised the rules and regulations regarding the administration of justice in civil causes, and the new Code of Procedure was accepted by the Governor-General-in-Council on 5 July 1781.[3] After Impey's recall the Board decided (15 November 1782), in accordance with the orders of the Court of Directors, to resume the offices of Judges of the Sadr Diwani Adalat, but it was no more able to function thus constituted than it had been in 1773, owing to the great load of business which the Board was carrying.[4] On 23 October 1786, however, Cornwallis, following instructions from home, decided that a more heroic endeavour regularly to dis-

[1] Bengal Rev. Cons., 28 March, 11 April 1780; 29 Dec. 1785.
[2] *Ibid.*, 29 Dec. 1785 [3] *Ibid.* [4] *Ibid.*

charge these important but unwelcome duties must be made, and he issued orders to the effect that the Governor-General-in-Council would sit as a Court of Civil Appeal once a week from 14 December.[1] On 15 September 1787 he was able to inform the Directors that the Sadr Diwani Adalat "has from the commencement of the present year been held with as much regularity as the business in it required and our other employments would admit."[2]

Such was the judicial system which Cornwallis found in existence upon his arrival in Bengal. In June 1787, when he had held office for only nine months, another important change had to be made as a result of the Court of Directors' instructions of 12 April 1786. They ordered the Board to reorganize the Collectorships, to reduce the number from 36 to 20 or 25, and to re-unite revenue and judicial functions, on the grounds that this arrangement was more consonant with Indian custom, and that it would promote "simplicity, energy, justice, and economy." In coming to their decision, which Cornwallis reversed in 1793 without awaiting the Directors' opinions, the Court acted on the advice which Stuart and Shore had previously tendered. Stuart had stated that the division of revenue and judicial authority had resulted in unfortunate clashes, to prevent which, it had been decided "that during the months of the heavy collections, the administration of justice should be suspended altogether, which was accordingly done. The Judges, therefore, do not at present sit above seven months in the year, a period by no means sufficient to enable them to keep up their business."[3] Macpherson had expressed doubts of the wisdom of Stuart's proposals, and thought of the risk involved in "vesting so unchecked a power generally in the hands of our servants."[4] In 1782 Shore had been very decidedly of Stuart's opinion. People being accustomed to a despotic authority, he said, should look to one master only. It was impossible to draw a clear distinction line between the revenue and judicial departments in such a manner as to prevent them from clashing: if a clash occurred, either the revenue could not be realized, or the administration of justice would be suspended. "The present Regulations define the objects of the two several jurisdictions with clearness and precision, yet they continually clash in practice. Complaints are so blended that it is often

[1] *Ibid.*, 23 Oct. 1786; Bengal Revenue Letter to Court, 13 Nov. 1786.
[2] Bengal Public Letter to Court, 15 Sept. 1787.
[3] Bengal Rev. Cons., 10 May 1785. [4] *Ibid.*, 18 May 1785.

impossible to determine to which tribunal they belong, and that there has not been more confusion than has actually happened, is owing to the discretion of those who have been entrusted with the administration of justice." [1]

So in June 1787 the three offices of Magistrate, Civil Judge and Collector were united in one person, except at Murshidabad, Dacca and Patna, where a full-time Civil Judge was needed.[2] In the capacity of Judge the District Officer was responsible to the Sadr Diwani Adalat; as revenue administrator and Magistrate he was subject to the authority of the Board of Revenue and the Governor-General-in-Council.

The distinction between revenue causes and all other civil causes, which had originally been made by Hastings in 1772 when he decreed that the question of the succession to zamindaris and talukdaris should be left to the decision of the President and Council, and which he confirmed in 1780, was retained in 1787; the Regulations framed on 8 June of that year for the guidance of the Collectors authorized them to hear and decide causes relating to the revenue in the Mal Adalat—the Collector's cutchery; and empowered the Board of Revenue to hear and decide appeals from the Collector's decision, but the Board's orders were to be subject to the "revision and ultimate decision of the Supreme Council in case either party shall think fit to make a further appeal." [3]

When more than 100 rupees were paid annually as taxes on landed property, and when over 1,000 rupees' worth of personal property were at stake, an appeal from the Diwani Adalat to the Sadr Diwani Adalat was allowed. Its decision was final except that a further appeal to the King-in-Council was granted when

[1] Bengal Rev. Cons., 18 May 1785.

[2] Bengal Revenue Letter to Court, 31 July 1787.

[3] Bengal Rev. Cons., 8 June 1787. (Paragraphs 4 to 8, and 42 of the Revenue Regulations.) It was laid down in the Regulations for the Diwani Courts (Bengal Rev. Cons., 27 June 1787) that the matters cognizable in the Diwani Courts were "all disputes concerning property, whether real or personal, all causes of inheritance, marriage, or caste, all claims concerning the right of succession to zamindaris, talukdaris . . .; all matters relating to debts, accounts, contracts, partnerships and duties; and, in general, all subjects of litigation being of a civil nature and not concerning the revenues." It was further declared "that the powers and authorities hereby given . . . do in no wise extend to . . . authorise any Court of Mufassal Diwani Adalat to entertain any suit or cause for any matter of thing, directly or indirectly, relating to the public revenue, nor concerning any demand of Government on zamindars, talukdars . . . or other landholders, farmers . . . or others employed in the collections, or in any wise responsible for the revenue . . . nor of any complaints of ryots against the persons to whom they pay revenue in the different gradations upwards, for irregular exactions."

more than Rs. 50,000 were involved. Disputes between Muhammadans were to be settled according to the Muhammadan Law; disputes between Hindus were to be decided by the Laws of the Shaster, although in cases of succession to landed property the Judge was also to ascertain whether they had been "regulated by any general usage of the pargana where the disputed land is situated, or by any particular usage of the family suing," and was to "consider in his decision the weight due to the evidence collected on this head." [1]

Causes where the amount involved did not exceed the sum of 200 rupees might be decided by the Register of the Diwani Adalat, the Collector's first Assistant. His second assistant similarly acted as Register of the Revenue Court.[2] Suits for less than 200 rupees might, at the Judge's discretion, be referred to an arbitrator, whose award was subject to the Judge's confirmation.

On 26 May 1790 the Governor-General-in-Council amended the procedure to be followed in the Revenue Courts, and empowered the Collectors to enforce their decrees in revenue causes "agreeable to the forms laid down by the Regulations for the Diwani Courts." [3] Further, the Supreme Council decided to constitute the Board of Revenue a Court of Review as well as a Court of Appeal (as it had hitherto been) in all causes cognizable by the Board, with powers similar to those vested in the Sadr Diwani Adalat.[4] The Board of Revenue suggested that the distinction in the mode of trial between revenue causes and all other civil causes should be abolished, and that all civil causes of whatever

[1] Bengal Rev. Cons., 27 June 1787.

[2] *Ibid.*, 16 June 1790.

[3] *Ibid.*, 28 May 1790.

[4] Bengal Public Letter to Court, 16 Aug. 1790. The foregoing narrative, together with the extract from the Revenue Consultations of 28 May 1790 given in this note, proves that Miss Penson's statement in the *Cambridge History of India* (v, 444) that the Courts of Mal Adalat, presided over by the Collector, were created only in May 1790, is inaccurate. "This change marks the culmination of the Collector's power." On the contrary, it was the combination of the offices of Collector, Civil Judge, and Magistrate in 1787 which marked the culmination of the Collector's power.

The Board of Revenue wrote to the Supreme Council on 19 May 1790: "We have the honour to submit copies of a letter and enclosure from the Collector of Rangpur, relative to the enforcement of a decree passed by him as Collector, and take this occasion of submitting to your Lordship-in-Council the propriety of empowering the Collectors generally, whilst the revenue causes specified in the 19th article of the Diwani Adalat Regulations continue cognizable by them, to enforce their decrees in such causes in the mode prescribed for the execution of decrees passed with Courts of Diwani Adalat.

"We beg leave however to submit for the consideration of your Lordship-in-Council whether, as there now appears no reason for the distinction, it would not be more admissible to revoke the 19th article of the Adalat Regulations and

description should be decided in the Diwani Court. When this distinction had been first made, it had been feared that if the zamindars were made liable to prosecution in the Diwani Adalat for breaches of engagement with their tenants, the revenue would not be realized. Cornwallis now declared that this supposition was founded on erroneous principles, and that had the zamindars been made responsible to the regular Court of Justice for all breaches of engagements and acts of oppression, the rights of the landholders and ryots would have become clearly defined, and the country would have been in a much more flourishing state than it then was in.[1]

The Supreme Council came to no decision on this matter at this time, and it was not until 1793 that the change which the Board of Revenue proposed and which Cornwallis approved, was brought about; and that the more important reform, by which the offices of Civil Judge and Collector were vested in different individuals, was effected. As things stood, the Collector heard and determined causes in which he himself was the defendant. Could it be supposed that in the capacity of Judge he would redress the wrongs which he or his assistants had done in the capacity of revenue administrators? The arrangements embodied the *odious principle that it was just and expedient for an individual* to decide causes to which he himself was a party.

"The benefits which have been experienced from Government having reserved to themselves the superintendence over the administration of justice in civil cases have been universally felt and acknowledged," declared the Governor-General in 1790.[2] Occasionally, however, abuses crept in and some irregularities were discovered. The only serious case was that of G. F. Grand, Judge of the City of Patna, who was suspended on 19 October

declare all causes of a judicial nature respecting claims between individuals cognizable by the Judges of the Diwani Courts."

"Agreed, that the proposition of the Board of Revenue for empowering the Collectors generally whilst the revenue causes specified in the 19th article of the Diwani Adalat Regulations continue cognizable by them, to enforce their decrees in such causes in the mode prescribed for the execution of decrees passed in the Courts of Diwani Adalat and that they be directed to issue the necessary orders to the several Collectors accordingly.

"Agreed, that the Board of Revenue be further informed that the Governor-General-in-Council will hereafter take into consideration their proposition for the revocation of the 19th article of the Adalat Regulations and declaring all causes of a judicial nature respecting claims between individuals cognizable by the Judges of the Diwani Courts." (Bengal Rev. Cons., 28 May 1790.)

[1] Cornwallis to Court, 15 Aug. 1790.

[2] Bengal Rev. Cons., 3 Dec. 1790.

1792.[1] He was charged with oppression and misconduct in his official capacity; with appropriating to his own use money lodged in his Court by suitors. It was alleged against him that large sums of money were raised and paid into his Court by the auction sales of debtors' property; that he had at least Rs. 80,000 in his own hands, not a piece of which could the creditors obtain. When ordered to hand over the money immediately and repair to the Presidency, he was unable to do so: a circumstance which went far to prove that he had used the money for his own purposes, otherwise it would have been found in the treasury of the Court, from which it should never have been removed. It was further noticed that many of his decisions which had been reversed by the Sadr Diwani Adalat, had been passed upon very insufficient grounds, and in some instances in direct opposition to evidence which was strongly in favour of the party against whom the decision had been given. "The upright administration of justice being essential to the welfare of the country, and the honour of the British nation as well as the character of the Government being deeply implicated in the conduct of the Judge," said Cornwallis, "I consider it incumbent upon me, as well upon the ground of public duty, as in justice to Mr. Grand, to recommend that an investigation should be made into these charges, as well into his general conduct since his appointment to the office of Judge of the Patna Court."[2]

Grand totally ignored the seriousness of the charges brought against him, and in his well-known *Narrative*, he made a very malignant and altogether inexcusable attack on the Governor-General, who had had no option but to suspend him until the completion of the lengthy investigation. In 1798 he wrote an appeal to the Court of Directors and in the following year he embarked for England. In April 1801, in declaring him guilty, the Court upheld the decision of the Bengal Government, but Grand never ceased to pose as a deeply injured and innocent man.

[1] Bengal Rev. Jud. Cons., 19 Oct. 1792. Grand had lost his Collectorship upon the reorganization of the Districts at the beginning of 1787, but showed no gratitude when the Governor-General gave him a Judgeship. Cornwallis wrote to Dundas on 12 April 1790: "I some time since appointed Mr. Grand, for whom you expressed your good wishes, Judge of Patna, which office was at least equal to Mr. Grand's abilities, or to any other merit that he possesses.

"Mr. Grand has now thought proper to be very angry because I did not make him Collector of Behar, and has both written and talked very impertinently, which makes me repent very heartily that I ever took any notice of him, for I am sure I got no credit by his promotion." (Melville Papers.)

[2] *Ibid.*, 28 Dec. 1792.

CHAPTER V

THE CORNWALLIS CODE, 1793

OWING to the outbreak of war between the East India Company and the ruler of Mysore, which necessitated Cornwallis's departure from Bengal to the Madras Presidency in December 1790, it was not until 1793 that he was in a position to correct the mistake of combining revenue administration and the administration of justice, in the hands of the Collector. It became his considered opinion that this combination of function had contributed more than anything else to retard the improvement of the country. The prosperity of the people, he pointed out, largely depended upon the effectiveness with which the Law protected the rights of property. People could have no confidence in the protection of the Laws when they saw that an official whose duty was to punish oppressive acts, was invested with functions which enable him to commit such acts with impunity, or to screen the offences of his subordinates.

The judicial duties of the Collector had always been regarded as less important than the work of revenue administration. His judicial business was often performed in a summary, irregular and unsatisfactory manner; and it came to a complete standstill whenever it interfered with the work of revenue collection. The Collector could not very well be blamed for acting on the assumption that his judicial duties were of only secondary importance. He received no salary as Judge and Magistrate. No publicity was given either to his exertions or to his omissions in his judicial capacity, but the least failure to realize the revenue was immediately noticed, laid him under the displeasure of his superiors, involved him in a loss of commission, and sometimes caused his dismissal from the service. Neither the landholders nor the ryots could regard him as an impartial Judge in revenue causes. People whom he had wronged in the revenue cutchery could never hope to obtain redress from him when presiding in the Diwani

Court. Whenever the revenue was likely to fall, the zamindars oppressed the ryots, knowing full well that the Collector would be inclined to overlook such oppression in his anxiety to fill the treasury. It was not the Collector himself, but his multitudinous subordinates, and those of the zamindars, who bullied and oppressed the people; and only a strict administration of justice by officers wholly unconnected with revenue collection, could check abuses and violations of the rules.

On the other hand, it might be urged that the interests of the people were amply safeguarded by their right of appeal to Government against a Collector's misconduct. That, in reality, was an extremely unsatisfactory safeguard. If a special officer were deputed to the District to inquire into the conduct of the accused, the Collector's partisans on the spot exhausted their ingenuity in impeding the progress of, and counteracting, the inquiry; and the petitioners, apprehensive of the restoration of the Collector to his station, were easily deterred from coming forward to give evidence against him. An investigation could not very well be undertaken by the Governor-General-in-Council, whose time was fully occupied. Even were the Collector dismissed, the injury done to the country was not thereby repaired, and discontent amongst the people was inevitably excited against the Government.

By Regulation II of 1793, the Collector was deprived of his judicial duties and was henceforth confined to the work of revenue administration. His Revenue Court was abolished. He ceased to be a Magistrate. The Judicial and Revenue Departments of Government were separated. From 1 May 1793 all Proceedings relating to the administration of civil and criminal justice were recorded in a distinct series of Judicial Consultations.

In 1790 Cornwallis had expressed his satisfaction with the results of the reform of the Civil Courts, but by 1793 the unfortunate effects of the policy of putting the Collectors in charge of the Revenue Courts and the Diwani Courts, had caused him to modify his opinions. He now declared that "the Courts of Civil Justice are in a state which calls aloud for remedy. Improper distinctions are made between causes; and separate Courts and establishments are unnecessarily kept up for the trial of them. The Courts for the trial of matters relating to the revenue, which involve the rights of all the various descriptions of landholders and cultivators of the soil, scarcely merit the appellation of

Courts of Justice." Business in the Diwani Courts had been so much neglected that sixty thousand suits remained undecided, many for years.

The abolition of the Collector's judicial offices, and the vesting of revenue and judicial functions in the hands of different officials, paved the way for the reform of these evils. The distinction between revenue and civil causes was abolished, and the trial of suits formerly cognizable by the Revenue Courts, was transferred to the Diwani Courts, which were continued, one in each District. Four Provincial Courts of Civil Appeal were set up at Patna, Dacca, Murshidabad and Calcutta. People living at a great distance from the Presidency town, and whose economic circumstances did not admit of their engaging the costly services of a professional vakil, often felt the hardship of having to submit to the decree of the District Court. Further, the Sadr Court was composed of the Governor-General and Council, who had little time to devote to the hearing of appeals, and it had become necessary to restrict the right of appeal from the local Revenue Courts to the Board of Revenue and ultimately to the Governor-General-in-Council. Now that the District Civil Courts were given cognizance of all civil causes, and now that all restrictions of the right of appeal from the District Courts were removed, the creation of additional Appeal Courts became necessary.

Each Court of Appeal was to consist of three English Judges, whose decrees were to be final in suits of personal property when less than one thousand rupees were involved, and in suits for real property where the annual value of its produce did not exceed five hundred rupees; otherwise a further appeal might be made to the Sadr Diwani Adalat. Cornwallis aimed at making these new Courts the "great security to Government for the due execution of the Regulations, and the barriers to the rights and property of the people," for they were empowered to receive charges of corruption preferred against the Judges of the local Courts.

Other restrictions on litigation were removed. Perhaps the most obnoxious and oppressive of these had been imposed by the 44th and 45th articles of the Regulations of 1787, which required a deposit of from 2 to 5 per cent. from a plaintiff who instituted a suit. This and other Regulations had been designed to check the litigiousness of the people, but the number of causes pending showed that the Regulations had not proved effective; and, moreover, they had caused hardship and inconvenience. "The

fact is," wrote Cornwallis, "that the evil which this Regulation is intended to obviate is ascribed to a wrong cause. It is not to be attributed to the litigiousness of the people, but with more truth to the dilatoriness and inefficiency of the administration of justice. From the Collectors not having time to attend to the judicial business, many years often elapse before suits are brought to a decision. This delay encourages the evil-minded to withhold what is due from them, or to institute prosecutions to gratify private resentment. They are certain that a great length of time will elapse before the cause is brought to a decision, and trust that by some means or other they shall be able to force their opponent into a compromise, or obtain their ends. If they have the property in their possession, they are at all events sure of enjoying it until the decision of the suit. The above causes account for the many thousand claims that are now depending in some of the Courts. These evils can only be remedied by speedy and impartial decisions, and punishing the litigious according to the circumstances of the case, and not by imposing a fine upon all suitors indiscriminately, and then allowing their causes to remain for years undecided." The abolition of deposit fees threw open the Courts of Justice to all.

Another Regulation provided for the appointment of a number of licensed Hindu and Muhammadan vakils, or pleaders, as the legal representatives of suitors who preferred not to conduct their own case. The fees which they were entitled to charge were carefully graduated according to the value of the suit. These pleaders were primarily to be selected from the students in the Muhammadan College at Calcutta and the Hindu College at Benares. It was felt that this new Regulation would minimize the undesirable results of employing private advocates. A private vakil was more anxious to protract the hearing of a suit than to expedite it, since his fees partly depended on the length of the case. It was found, too, that he was often willing to be bribed by the opposite party. Sometimes a suitor, instead of employing a vakil, sent one of his servants or dependents to conduct the case on his behalf: an arrangement which was equally unsatisfactory. These men were ignorant of the law and unacquainted with the technicalities of procedure; their pleadings were apt to be diffuse and irrelevant; and their limited experience of Law Courts exposed them to the intrigues of Court officials who perpetually harassed their movements and extorted

money from them. Pleaders licensed by the Courts would find it to their interest to serve their clients to the best of their ability, and their fees would be standardized. Such men, too, would be a check on the Judges: as Cornwallis observed, "they would not only inform the Judges by their pleadings, but also be a great check upon their conduct; no act of partiality or deviation from the Laws could escape their notice or fail to be exposed; they would lay the Judges under the necessity of making themselves acquainted with the Laws and Regulations and of administering them impartially; they would put a stop to all the numerous abuses which are daily practised by the ministerial officers of the Court."

Equally elaborate rules were laid down for taking the evidence of Hindu or Muhammadan women whose social status forbade their presence in Court. Another clause defined the Law that was to be administered in the Civil Courts. "In suits regarding succession, inheritance, marriage and caste, and all religious usages and institutions, the Muhammadan Laws with respect to Muhammadans, and the Hindu Laws with respect to Hindus, are to be considered as the general rules by which the Judges are to form their decisions. In the respective cases, the Muhammadan and Hindu law officers of the Court are to attend and to expound the Law."

Six years' experience of the working of the civil code of Regulations of 1787 had sufficed to show the necessity of increasing the number of local Courts. There was but one in each District for the trial of civil causes, and the parties in even the most trivial suits were obliged to appear in Court and remain perhaps for days until judgment was given. Witnesses too were similarly inconvenienced and put to much expense. The Courts were overwhelmed with business, and the administration of justice was obstructed. In order to expedite the hearing of causes, a Regulation was now passed whereby commissions were granted to qualified Muhammadans and Hindus for the hearing of causes in which not more than fifty rupees were involved. The number of commissioners was to be such that no defendant might be under the necessity of travelling more than ten miles to answer a suit. From the decisions of the commissioners an appeal could be made to the Diwani Adalat. Cornwallis was reluctant to give these judicial powers to Indian officials; he did so because the inadequacy of the cadre of the Company's service made it impossible

to appoint Europeans to a large number of subordinate judicial posts.

The method of settling disputes by arbitration, which had been recognized in 1787, and earlier by Hastings, had not been altogether satisfactory. The Diwani Courts had been authorized to refer suits to a single arbitrator without the consent of either party—a form of procedure which unjustly deprived both defendant and plaintiff of the right of having their case tried by the regular tribunals. Even when both parties had agreed to recognize the arbitrators appointed by the Judge, there was no provision for settling differences of opinion between the arbitrators, or for completing the award in the event of the arbitrators failing to do so within the prescribed period But these defects in the Regulations of 1787 were now removed.

The most important of the many manifestations of the new feeling of responsibility for the welfare of the people under British rule which Warren Hastings had done much to arouse, was the passing of two Regulations which made Government officials responsible for acts done in their official capacity, and which made European residents in the districts amenable to the jurisdiction of the local Civil Courts. Hitherto the revenue officials had not been amenable to any Court of Justice for acts done in their official capacity; if they committed oppressive acts, the injured party had no means of obtaining redress except the very uncertain and unsatisfactory method of petitioning the Board of Revenue or the Governor-General-in-Council. Such petitions were generally sent back to the Collector for his report, but obviously an impartial inquiry and report could not be guaranteed if the complaint was against either himself or his assistants. Yet upon this report orders were passed. If the Collector was censured or his subordinates dismissed, the satisfaction to the complainant was but slight, and no security against the repetition of oppressive acts was obtained. Now, for the first time in the history of British India a Government Regulation laid down the principle of the Sovereignty of Law. The preamble to the Third Regulation, which made Government officers personally responsible for damages awarded against them by a Civil Court for acts authorized by the Regulations, stated:

"To ensure to the people of this country as far as is practicable, the uninterrupted enjoyment of the inestimable benefit of good

laws duly administered, Government has determined to divest itself of the power of interfering in the administration of the Laws and Regulations in the first instance, reserving only, as a Court of Appeal or Review, the decision of certain cases in the last resort; and to lodge the judicial authority in Courts of Justice, the Judges of which shall not only be bound by the most solemn oaths to dispense the Laws and Regulations impartially, but be so circumstanced as to have no plea for not discharging their high and important trusts with diligence and uprightness. They have resolved that the authority of the Laws and Regulations so lodged in the Courts shall extend not only to all suits between native individuals, but that the officers of Government employed in the collection of the revenue, the provision of the Company's Investment, and all other financial or commercial concerns of the public, shall be amenable to the Courts for acts done in their official capacity in opposition to the Regulations; and that Government itself, in superintending these various branches of the resources of the State, may be precluded from injuring private property, they have determined to submit the claims and interests of the public in such matters, to be decided by the Courts of Justice according to the Regulations, in the same manner as suits between individuals." "The adoption of the above rules," said Cornwallis, "will effectually prevent, in future, the tyranny and oppression which has been so frequently exercised throughout the country by the native officers employed in the collections, and compel the Collectors to adhere strictly to the Regulations and instructions prescribed for their guidance."

The people were given a further measure of protection against the misconduct of Europeans by the Regulation which prohibited British subjects, other than the King's officers and covenanted servants, from residing at a greater distance than ten miles from Calcutta, unless they entered into a bond to submit to the jurisdiction of the District Courts in civil actions brought against them by Indians. English traders had easily been able to recover their claims on Indians in the local Courts, but Indians could obtain redress only at great expense and inconvenience by applying to the Supreme Court of Judicature in Calcutta. "The proposed Regulation," said Cornwallis, "will afford a permanent security to the trading part of the people against the oppressions of private merchants and traders, and at the same time give them a confidence in the justice of our Government and convince them

of our solicitude for their welfare." [1] Other Europeans (except Frenchmen, who, by the fourth Article of the Convention of Versailles, 31 August 1787, were permitted to reside in the six French Factories of Chandernagore, Kasimbazar, Dacca, Jugdia, Balasore and Patna) were already amenable to the jurisdiction of the local Courts. British subjects who refused to sign the required undertaking were to be compelled to return to Calcutta within twelve months.

No further changes in the administration of criminal justice were now made, and the Regulations of 3 December 1790 were re-enacted almost in their original form. The Judges of the Provincial Courts of Appeal were also to be the Judges of the Provincial Courts of Circuit. Since each of the four Courts of Civil Appeal was to consist of three Judges, the Provincial Courts of Circuit would have three, instead of two, Judges. The Judges of each Circuit, therefore, were to form themselves into two Courts, one to be superintended by the senior Judge, and the other by the two junior Judges. The circuit work would be completed in half the time hitherto taken, and the Judges, therefore, would have ample time to hear civil appeals.

The reforms of 1 May 1793 were designed as the basis of a great legal code. The Judges were authorized to propose new Regulations, and such proposals as were accepted as Regulations were to be bound up annually in volumes. A preamble was to be attached to each Regulation, detailing the reasons for its enactment: a provision which was intended to guard against overhasty amendment or repeal.

Adequate salaries were attached to the new posts, and the reforms were estimated to cost an additional sum of three or four lakhs. "It would, in my opinion," wrote Cornwallis, "be unjustifiable in every point of view, towards a people who pay so

[1] Several Acts of Parliament prohibited British subjects from residing or trading within the limits of the exclusive trade of the East India Company without a license from the Company. In December 1787 the Governor-General-in-Council ordered the Collectors to compile lists of Europeans being British subjects not in the Company's service, and instructed them to inform these individuals that they would not be permitted to remain in Bengal after 1 March 1788 without a license from Government. Mr. Mercer reported that there were 27 such individuals residing in or near Patna, and six of them were "a great source of trouble and vexation, from their disputes with the natives, whom they have too frequently been induced to oppress and maltreat, from supposing that no authority was possessed by me sufficient for restraining them." Of the 20 in the list furnished by the Collector of the Twenty-four Parganas, five were punch-house keepers, two were indigo manufacturers, and several were merchants (Bengal Public Cons., 11, 25 Feb. 1788).

great a revenue, and from whose industry our country derives so many advantages, to deny them the benefit of such part of the public revenue as may be necessary to defray the charges of good government; and I trust I have clearly proved that the proposed arrangements are calculated for that purpose, as well as essential to the future security and prosperity of the British dominions in Bengal. To have suffered, therefore, the increase of expense . . . to operate as a bar to the adoption of them, would have been a destructive and even a criminal species of economy. I feel at the same time the less repugnance at proposing this augmentation of the public expenses, when I reflect that retrenchments have been made in every department of the Government in which they could be effected without prejudice to the service, and that the different branches of the revenue have been improved and placed under such Regulations as must render them daily more productive."

Cornwallis did not wait for the assent of the Directors to this increase of expenditure. His position was so strong that he could afford to act on his own initiative. He was about to return home, and was anxious to see the reforms put into their final shape before his departure. "Having," he said, "during the considerable period that I have presided over their affairs, had ample opportunities of observing how inefficient the various arrangements of former Governments had proved, to establish a system for governing this country conformable either to the liberal and humane spirit or the real interests of the British nation, I have considered it to be one of the most valuable services which I could render to the Company to devise remedies for such pernicious defects, and to propose that no further time should be lost in applying them; and I persuade myself that the Court of Directors must be sensible that no motive could have induced me to undertake a laborious and complicated arrangement at the close of my administration, but a conviction of its being essential for the national honour and the future prosperity of their dominions."

On 15 and 25 March 1793, Shore, who had been nominated as Cornwallis's successor, signified to the Governor-General and Dundas respectively, his hearty approval of the reforms. He did, however, suggest that he himself would not have ventured to carry out the new arrangements until they had received the sanction of the Court of directors; first, because of the additional expense

that was to be incurred, and second, because of the Directors' frequently expressed disapproval of innovations of system. It is noteworthy that two of the main features of the Cornwallis reforms—the separation of revenue administration from the administration of justice, and the substitution of English for Indian Judges of the Criminal Courts—which Shore now heartily approved, had met with his disapprobation eleven years earlier. It boded well for the success of the reforms that the man who was to be burdened with the responsibility of carrying them into effect, had already expressed his unqualified approval of all the principles upon which they were founded. In their Despatch of 30 April 1794 the Court of Directors frankly acknowledged their error of 1786 in ordering the Governor-General-in-Council to combine judicial with revenue administration, and declared that they had no hesitation in giving their sanction to the abolition of that mistaken system.[1]

NOTE A

Abstract of the 48 Regulations comprising the Cornwallis Code

I. A Regulation declaring the assessment of the land revenues of Bengal Bihar and Orissa to be permanent, subject only to the approval of the Court of Directors.

II. A Regulation abolishing the Courts of Mal Adalat (Revenue Courts), and transferring the trial of revenue causes to the Diwani Courts, and prescribing rules for the conduct of the Board of Revenue and of the Collectors.

III. A Regulation setting forth the jurisdiction of the Courts of Diwani Adalat.

IV. A Regulation elaborating the procedure of the Diwani Courts.

V. A Regulation establishing four Provincial Courts of Appeal (at Calcutta, Patna, Dacca and Murshidabad) from decisions passed in the District Diwani Courts.

VI. A Regulation defining the powers and duties of the Sadr Diwani Adalat, and prescribing rules for receiving and deciding upon appeals from the decisions of the Provincial Courts of Appeal.

[1] The authorities for this chapter are as follows: The Second Report of the Select Committee of the House of Commons on East Indian Affairs, 1810. (Appendix 9 consists of Cornwallis's Minute of 11 February, in which he outlined the proposed changes.) Also, *The Bengal Regulations*, Vol. I; Bengal Rev. Jud. Cons., 29 March 1793; Bengal Revenue Letter to Court, 6 March 1793; Bengal Public Letter from Court, 30 April 1794; *Shore Correspondence*, i, 238.

VII. A Regulation for the appointment of vakils (Indian pleaders) in the Courts of Civil Judicature.

VIII. A Regulation adapting the rules passed in 1789 for forming a decennial settlement of the land revenue, to the principles of Regulations II and III, 1793. The decennial settlement to be made permanent, with the approbation of the Court of Directors.

IX. A Regulation re-enacting with modifications the Regulations of 3 December 1790 which established Criminal Courts of Circuit and re-established the Nizamat Adalat at Calcutta, consisting of the Governor-General and members of the Supreme Council.

X. A Regulation re-enacting with modifications the rules passed on 15 July 1791 for the guidance of the Court of Wards relative to landholders disqualified by minority, insanity, or profligacy of character, to manage their own estates. (On 20 August 1790 the Board of Revenue had been constituted a Court of Wards.)

XI. A Regulation removing certain restrictions to the operation of the Hindu and Muhammadan laws with regard to inheritance of landed property. Primogeniture, a custom which applied to certain landed property, was abolished in favour of the Hindu and Muhammadan principles of equal division.

XII. A Regulation for the appointment of Hindu and Muhammadan law officers of the civil and criminal courts.

XIII. A Regulation for the appointment of the ministerial officers of the civil and criminal courts, and prescribing their respective duties.

XIV. A Regulation for the recovery of arrears of revenue from the landholders: for enabling the Collectors to enforce payment without having recourse to the courts, so as to avoid the delay resulting from the institution of a legal process.

XV. A Regulation for fixing the rates of interest on past and future wars.

XVI. A Regulation for referring disputes to arbitration.

XVII. A Regulation empowering landholders to distrain and sell the personal property of under-tenants, for arrears of rent; and preventing landholders from confining or inflicting corporal punishment on their under-tenants to enforce payment of arrears.

XVIII. A Regulation for preserving the records of the civil and criminal courts.

XIX. A Regulation re-enacting rules passed on 1 December 1790 for trying the validity of the titles of persons holding or claiming to hold a right to lands exempted from the payment of revenue to Government.

XX. A Regulation empowering the District and Sadr Courts and the Provincial Courts of Appeal to propose Regulations regarding matters coming within their cognizance.

XXI. A Regulation for establishing in each District an office for keeping the records relating to the public revenue.

XXII. A Regulation re-enacting with amendments the Regulations of 7 December 1792 for the establishment of an efficient Police throughout the country.

XXIII. A Regulation for raising an annual fund for defraying the expense of the Police establishment.

XXIV. A Regulation for determining the continuance or discontinuance of the pensions paid by landholders, but included in the assessment of revenue payable to Government.

XXV. A Regulation for the division of estates paying revenue to Government, and for allowing two or more proprietors to hold their shares as a joint undivided estate.

XXVI. A Regulation extending the term of minority of Muhammadan and Hindu landholders from the end of the fifteenth to the end of the eighteenth year.

XXVII. A Regulation abolishing internal duties and taxes imposed by landholders, and laying down the principle that taxes and duties are levied by Government alone.

XXVIII. A Regulation prohibiting British subjects (excepting King's officers and the Company's civil servants) from residing at a greater distance from Calcutta than ten miles, unless they render themselves amenable to the Diwani Courts in civil suits that may be instituted against them by Indians and all other British subjects, who could hitherto obtain redress only from the Supreme Court of Judicature at Calcutta.

XXIX. A Regulation prescribing rules for the conduct of officials employed in the salt manufacture.

XXX. A Regulation for preventing the illicit manufacture or importation of salt.

XXXI. A Regulation for the conduct of Commercial Residents and Agents and all persons employed or concerned in the provision of the Company's Investment.

XXXII. A Regulation laying down the terms of contracts concluded for the provision of opium, and for preventing illicit trade in opium.

XXXIII. A Regulation for repairing the embankments maintained at the public expense, and for encouraging the digging of tanks or reservoirs and watercourses, and making embankments.

XXXIV. A Regulation levying a tax upon intoxicating liquors and drugs and for preventing the illicit manufacture and sale of them.

XXXV. A Regulation for the reform of the gold and silver currency.

XXXVI. A Regulation establishing a Registry for Wills and Deeds, for the transfer or mortgage of real property.

XXXVII. A Regulation for trying the validity of the titles of persons holding or claiming a right to hold Altamgha, Jagir and other lands exempt from the payment of public revenue.

XXXVIII. A Regulation prohibiting the Company's covenanted civil servants employed in the administration of justice or collection of the revenue, from lending money to landholders or tenants, and prohibiting all Europeans from holding or renting lands without the sanction of the Governor-General-in-Council.

XXXIX. A Regulation for the appointment of Kazis who prepare and attest deeds of transfer and other law papers, celebrate marriages and perform other religious duties prescribed by Muhammadan law.

XL. A Regulation granting commissions to Indians to hear and decide civil suits for sums of money, or personal property not exceeding S. Rs 50 in value.

XLI. A Regulation for forming into a regular Code all Regulations that may be enacted for the internal Government of the British territories in Bengal.

XLII. A Regulation prescribing rules for the collection of Government and Calcutta customs.

XLIII. A Regulation granting lands to invalided Indian officers and private soldiers.

XLIV. A Regulation prohibiting the fixing the jama of dependent taluks, or granting leases or pattahs for a term exceeding ten years; and, in cases of lands being disposed of at public sale for the discharge of arrears of revenue, for rendering null and void all engagements (with certain exceptions) subsisting between the defaulting proprietor and his dependent talukdar or under-tenants, for the payment of rent or revenue on account of the lands so sold.

XLV. A Regulation for disposing of Malgazari and Lackherage lands at public sale, pursuant to decrees of the Courts of Justice.

XLVI. A Regulation for admitting persons of certain descriptions to sue in the Civil Courts as paupers.

XLVII. A Regulation providing for differences of opinion between the Judges of the Provincial Courts of Appeal, or the Court of Circuit.

XLVIII. A Regulation for forming a quinquennial register of the landed estates in Bengal, Bihar and Orissa, subject to the payment of revenue to Government, and of the amount of the fixed annual revenue payable to Government from each estate.

CHAPTER VI

THE POLICE AND THE GAOLS

1. The Calcutta Police

THE history of Police and Gaol administration during the years 1786 to 1793, illustrates further the anxiety of Cornwallis to complete the acceptance of direct responsibility for the Nizamat, which Hastings had first begun to assume.

In 1786 Calcutta, the capital of Bengal, possessed no legally constituted Police force. Warren Hastings, indeed, had tried to establish one, but the insufficiency of his powers had made his efforts of little avail. The Government was in no position to remedy the evils created by this remarkable situation. Some police, indeed, existed, but their value and efficiency may be gauged from the fact that, acting without any legal sanction, they were liable to be punished by the Supreme Court of Judicature for every exercise of authority, no matter how essential it might be.[1]

In 1785 Macpherson had referred to the " relaxed state " of the Police and the growing frequency of robberies, but the appointment of a second Superintendent was the only step he took to reduce the volume of crime.[2] At one time the approaches to the town both by river and road had been guarded at night by a special body of watchmen. They had stopped the nocturnal wanderings of suspicious characters, and, stationed in ten armed boats near the different ghats, had prevented anyone from landing or departing at improper times. But, for purposes of economy, this establishment of night patrols had been disbanded in February 1786, although the tax for its maintenance continued to be levied from the townsfolk.[3] It was not until

[1] Bengal Public Letter to Court, 6 March 1788
[2] Bengal Public Cons., 21 March 1785
[3] *Ibid*, 31 Dec 1789.

January 1790 that these buxaris and sidiwals, or guards, about 250 in number, were re-established, in response to many requests.[1]

Another serious difficulty arose from the fact that, with the exception of the Judges of the Supreme Court of Judicature, there were no Magistrates in the town who could dispose of petty cases. It was obviously of little use to arrest offenders who could not be tried and punished. The Supreme Court of Judicature had superseded the old Mayor's Court set up in 1726, which had summarily decided causes in which Europeans were concerned.[2] The new Court, created in 1773, functioned only twice a year. It is true, indeed, that the Governor-General-in-Council was authorized to hold Courts of Quarter Session, but the multifarious duties of the Councillors made it impossible for them either to make use of this power or to function as Justices of the Peace. In the absence of other Magistrates, therefore, the duty of hearing the numerous daily cases was solely performed by the Judges of the Supreme Court, but it was rightly regarded as a burdensome addition to their labours. Since no other Court existed in Calcutta for the trial of petty offences, some of the functions that should have been discharged by specially appointed Magistrates, were being illegally exercised "in a mode not consonant to the Laws of England and only justifiable upon the principles of absolute necessity," by the two Superintendents of Police. The thirty-sixth clause of the Regulating Act (13 Geo. III, c. 63), indeed, had empowered the Governor-General-in-Council to make Rules, Ordinances and Regulations for the good order and civil government of the Company's settlements at Fort William and other Factories and places subordinate; but Cornwallis could not avail himself of these powers to regularize and legalize the position of the Superintendents of Police, for the simple reason that such Rules, Ordinances and Regulations were not to be repugnant to the Laws of England. To invest police officers with powers of summary decision was contrary to the Laws of the Realm. The Government of Bengal had formerly proposed to

[1] Bengal Public Cons., 4 Jan., 5 Feb. 1790; Bengal Public Letter to Court, 12 April 1790.

[2] The Supreme Court's decision that no other Court could exercise criminal jurisdiction in Calcutta virtually abolished, not merely the Mayor's Court (in which Company's servants, appointed by, and removable at the pleasure of, the President and Council, had presided) but also the Faujdari Court, which necessarily ceased to exist when the Supreme Court announced that all inhabitants of Calcutta were British subjects.

make a Bye-law on this principle, but it had been rejected by the Home Government.[1]

In March 1788, however, Cornwallis sent to England the draft of a Bill which would authorize the Governor-General-in-Council to appoint from the ranks of the Company's service and the respectable inhabitants of the town, a sufficient number of Justices of the Peace to try petty offenders, and which would further empower him to appoint regular police officers.[2] Cornwallis abandoned the idea of applying to Parliament to legalize the position of the Police Superintendents, partly because the previous attempt had failed, and partly because of the opposition of Sir William Jones, one of the Judges of the Supreme Court. In February 1785 Sir William Jones had urged Pitt to appoint "a dozen or twenty gentlemen of the first rank in the settlement" as Justices of the Peace,[3] but the Prime Minister had not done so. "The evil to be remedied," wrote the Judge to John Shore, "is the small number of Magistrates; the obvious remedy is to appoint a greater number. If the Legislature, therefore, would give the Governor-in-Council a power to appoint from six to twelve Justices of the Peace, those Justices would (under the direction of Government) appoint subordinate peace-officers, whose legal powers are very considerable, yet accurately defined; but a *Superintendent of the Police* is an officer unknown to our system, borrowed from a foreign system, or at least suggesting the idea of a foreign constitution, and his powers being dark and undefined, are those which our Law most abhors. The Justices would hold a session every quarter of a year, without troubling the members of Government, who have other avocations, so that in every year there would be six sessions for administering criminal justice."[4]

The non-existence of regular Police Courts, and the illegal nature of the jurisdiction exercised by the two Police Superintendents, account for the lawless state of Calcutta during these years. There were many streets through which people passed after sunset at the peril of their lives.[5] The watch-houses were haunted by criminals; abandoned ruffians, masked and armed, burgled houses with little risk of capture, and committed outrages on inoffensive citizens.[6] The situation of Calcutta rendered

[1] Bengal Public Letter to Court, 6 March 1788.
[2] *Ibid.*; Cornwallis to Court, 3 March 1788.
[3] P.R.O., Chatham Papers, Packet 362, Jones to Pitt, 5 Feb. 1785.
[4] *Works of Sir W. Jones*, II, 158. [5] *Ibid.*, VII, 35. [6] *Ibid.*, VII, 27.

the town peculiarly liable to be overrun by these bands of criminals. Its outskirts, remarked the Police Superintendents, had " more the appearance of a jungle than an inhabited town." [1] The villages that surrounded it at a distance of a few miles harboured ruffians of every denomination. Vast numbers would nightly cross the Maratha ditch which in an arc of several miles from the bridge at Chitpore to the end of Chowringhi surrounded the town, would penetrate through the semi-jungle which lay between the ditch and the town itself, and, after raiding every quarter, would retire unperceived under cover of darkness into the jungle. Many wealthy Indians had suffered so severely from the unwelcome attention of these dacoits, that they had been obliged to employ armed guards to protect their houses.[2] A petition presented to the Governor-General-in-Council in October 1791 by a number of Indian residents, quaintly expresses their grievances and apprehensions. They wanted nothing, they said, " but to dwell themselves in peace . . . under polished government, as they have been many years prior, to preserve their property and lives, which now is hazard, by the fear of which their nights are long, without sleeping, their days are sorrow and troublesome, by which many of your petitioners, falling into, seek to ultimate their lives." [3]

So inefficient was the constabulary and so corrupt were the Police Superintendents that in December 1788 Cornwallis appointed a committee of three civil servants to investigate a series of charges brought against the Superintendents, and to suggest reforms.[4]

The committee found that the complaints were justified, and declared that the lawlessness of the town was mainly due to the illicit practices of the Superintendents, and to the precarious nature of their powers.[5] The Bye-law which had created these offices in 1774 before the arrival of copies of the Regulating Act which invalidated that Law, had been abolished, but the Superintendents, though they possessed no legal authority to function as Magistrates, acted in that capacity, " but under circumstances of such embarrassment and responsibility as often to deter them from enforcing their own decrees." The only power which

[1] Bengal Public Cons., 31 Dec. 1789.
[2] *Ibid.*, 29 May 1789; 20 July 1791.
[3] *Ibid.*, 19 Oct. 1791.
[4] *Ibid.*, 29 May 1789; Bengal Public Letter to Court, 9 Jan., 10 Aug. 1789.
[5] Bengal Public Cons., 29 May 1789.

Government could legally confer was that of guarding the town. They had authority to arrest, but none to try and punish. "The town," declared the committee, "is in fact left without any Police whatsoever, for the jurisdiction of the Judges as at present exercised, by no means supplies the defect. A variety of offences, on the constant and immediate punishment of which the good order of the town depends, cannot be brought to a regular indictment before a jury at the Sessions, and though perfectly clear at the time of examination, are often, from the distant periods of the Sessions and the difficulty of re-assembling witnesses, not susceptible of that kind of proof which the strictness of English criminal jurisprudence requires." [1]

The Superintendents unlawfully exercised, not merely criminal, but also civil jurisdiction, which was even more incompatible with the nature of their office. They settled petty civil suits because the jurisdiction of the Court of Requests was limited to twenty rupees,[2] and the great expense of instituting a suit in the Supreme Court of Judicature made the police the only office to which a creditor for more than twenty rupees could apply. In possession of these unlawful judicial powers, the Superintendents had been unable to resist the temptation of extorting money from suitors to compensate for a very inadequate salary. They obtained another source of income from the subordinate police officers, the thanadars, who obtained their appointments only by giving a salami amounting sometimes to twelve months' pay. The thanadars recouped themselves by making heavy deductions from the wages of the petty constables; these in turn, extorted money from the public, and criminals who could satisfy the rapacious demands of the constabulary did not fear being brought to justice.

The committee of inquiry made important recommendations for the reform of the police. The Superintendents should be deprived of their civil jurisdiction; the jurisdiction of the Court of Requests should be extended to suits of two hundred rupees. The highly improper emoluments of the Superintendents derived from fines should be swept away, their salaries at the same time

[1] *Ibid.*, 29 May 1789.

[2] The jurisdiction of the Court of Requests was limited to Rs 20. "The members composing this Court," said the Board, "are selected from the junior servants of the Company, most of whom hold other offices, and receiving no pay or salary for their trouble and attendance, have little inducement to undertake the laborious duties of this Court or to discharge them with the assiduity required." (Separate General Letter to Court, 6 March 1788.)

being increased. The thanadars should be compelled to sign an agreement making them answerable for losses sustained by the inhabitants at the hands of thieves, if they failed to arrest the offenders. The pay of the thanadars and paiks, too, should be increased, so that capable and honest men might be found to replace the rogues who had been so frequently confederated with the criminals whom it was their duty to apprehend.[1]

Because the Police Bill sent home in 1788 had been temporarily shelved, Cornwallis decided that the thoroughly unsatisfactory state of the Calcutta Police necessitated immediate action, and on 12 and 14 October 1791 Regulations of a provisional nature for the reorganization of the police establishment were passed. The Chief Superintendent, Motte, who had at one time been Postmaster at Benares, and who was not a covenanted civil servant, was dismissed. The new Superintendent, Meyer, who was holding the office of Preparer of Reports (which he was to retain), and who was to be assisted by two deputies, was authorized to introduce reforms, which were to receive the sanction of Government. All fees, fines, forfeitures, and judicial powers were abolished.

Mr. Meyer's proposals were accepted in December 1791. To facilitate the arrest and conviction of criminals, a regular scale of rewards was instituted for their discovery, the amount varying from Rs 400 for a murderer to Rs 200 for a burglar. The salaries of all the Police officers were substantially increased, the 31 thanadars receiving Rs 10 a month, and the 700 paiks Rs 4 a month. The new arrangements were to operate from 1 January 1792.[2]

2. The Mufassal Police

It was obvious that the establishment of Courts of Justice, however well constituted, could be of comparatively little use in reducing the volume of crime, so long as, for want of an efficient Police force, dacoits and other criminals could pursue their careers of crime with a large measure of impunity.

Before 1772 the control of the Police in Bengal, being part of the Nizamat, with which the Company was supposed to have no

[1] Bengal Public Cons., 29 May 1789.

[2] *Ibid.*, 12 Oct., 14 Oct., 7 and 14 Dec. 1791; Bengal Public Letter to Court, 12 Aug. 1791, 25 Nov. 1791, 25 Jan. 1792. The Act of 1793 (33 Geo. III, 52) authorized the Governor-General-in-Council to appoint as many Justices of the Peace as were required, from among the Company's civil servants or other British inhabitants.

concern, was in the hands of the Naib Nazim. His representatives in the Districts, to whom he delegated his responsibility, were the Indian Judges of the Faujdari Adalats and a number of the zamindars, who acted as Magistrates. Every zamindar was responsible for the peace and security of his estates, and kept up, or was supposed to keep up, at his own expense, an adequate number of paiks under the charge of thanadars. His responsibility meant that unless he secured the arrest of criminals who committed robberies on his lands, he was made to compensate those whose property had been stolen.

The ancient methods of police administration, however, had completely broken down beneath the weight of corruption and inefficiency. Hastings reported in 1772 that the Police establishment in the Province was deplorably inefficient and was grossly neglected. His attempts to reform it were nullified by the mistaken policy of his rivals in the Council who, gaining the ascendancy in 1775, again proclaimed the sovereignty of the Nawab and put Muhammad Riza Khan once more in charge of the Criminal Courts and the Police. The Naib Nazim's half-hearted efforts to revive the Police force proved unsuccessful, and on 6 April 1781 the Governor-General, having regained his authority in the Council, dismissed the Police Magistrates, the Faujdars, whom Muhammad Riza Khan had appointed, and gave to the English Judges of the Diwani Courts magisterial powers of arrest and commitment.[1] The Indian Judges of the Criminal Courts, however, and some of the zamindars, were allowed to retain their powers of arrest and committal, which they had enjoyed under the old Mughal Constitution.

In the following year Hastings made an attempt to make the responsibility for the peace and order of the country, with which the landholders by immemorial custom were burdened, a reality. "Whereas the peace of the Provinces," ran his remarkable Proclamation of 29 June 1782, "has been greatly disturbed through the negligence or connivance of the zamindars, it is hereby ordered and proclaimed that all zamindars, chowdris, talukdars and other proprietors of land do, conformably to the original and fundamental tenure on which they all hold their zamindaries or other portions of landed property, take effectual care that no robberies, burglaries or murders be committed within their Districts, and that they do their utmost to bring the offenders

[1] Bengal Rev. Cons., 6 April 1781.

to justice; that they do erect thanas in such places as shall be pointed out to them by the Magistrate, and be answerable for the good behaviour of the thanadars and other officers appointed thereto, and for their punctual obedience of all orders issued to them from the Magistrates; and it is hereby declared that if any robbery be committed, the zamindar to whose District the robbers appertain, or in whose District the robbery was committed, according to the circumstances of the case, shall be made to refund the amount. But if any zamindar shall either commit or connive at any murder, robbery, or other breach of the peace, and it be proved against him, he shall be punished with death. Or if any zamindar shall refuse or neglect to obey any orders issued under the authority of Government, he shall be punished as the nature of the case and the degree of the crime shall require." [1]

But this Proclamation was so severely worded that it could not be rigorously enforced, and, in fact, it came to be much more honoured in the breach than in the observance. The Collector of Tirhut, for example, declared that he knew of scarcely a single instance in which the property of a zamindar had been confiscated for neglect of duty; the Burdwan Magistrate, too, stated in 1790 that he could not quote a single instance "where the stolen effects have been recovered, or the property reimbursed by the zamindar, although the whole gang of the dacoits may have been apprehended." [2]

The nature and extent of the zamindar's obligation was never accurately defined. By some it was held that the responsibility of the landholders did not extend to robberies committed between sunrise and sunset, nor even to robberies committed during the night unless the property was stolen from the zamindar's cutchery and was actually being guarded by his police. The strict enforcement of the law would mean that in many cases one person would be punished for crimes which others had committed. Dacoits rarely committed their depredations in the zamindari in which they lived; and, moreover, it was almost impossible to repel their attacks, which were generally made under cover of darkness, suddenly and without warning. To make a zamindar responsible for a dacoity merely because it happened to be committed on his estates, was felt to be an arbitrary proceeding alien to the

[1] Bengal Rev. Cons., 29 June 1782.
[2] Bengal Rev. Jud. Cons., 18 March 1791.

traditions and ideals of British administration. Since, therefore, the Proclamation was seldom enforced, the people derived from it little or no protection and security.

The unit of police administration was, then, the individual zamindari. Since the landholder was responsible merely for his own estates, there was no co-operation between the police which he maintained and the police which the neighbouring zamindars kept up: a situation which obviously favoured the escape of criminals. Since the zamindar was supposed to be personally responsible for the peace and security of his lands, he had the right to take such means as he considered necessary to ensure the arrest of offenders; so he himself appointed the thanadars who were in charge of the paiks, or petty constables. But instead of being the scourge, the zamindari police were all too frequently found to be the protectors, of criminals; consequently crimes of every description had multiplied. The thanadars were poorly paid, and their money was often in arrears. They learnt from experience that it was much more profitable to take money from criminals than to appeal to the Diwani Court for the payment of the small salaries which the zamindars, their masters, frequently withheld. In some districts they received no pay at all, but were given small patches of land for their maintenance. They had often to purchase their position, the appointments being put up to auction and sold at very exorbitant rates, no regard being paid to the character or suitability of the intending purchaser so long as he could pay the money and subsequently bear the annual exactions of the zamindar. The Burdwan Magistrate declared that the zamindars who had come under his personal observation were the source of all robberies and outrages. "I should not hazard this assertion," he said, "did not the Faujdari proceedings furnish repeated instances to the fact, where thanadars have either kept dacoits in their employ or received from them considerations to a great amount for granting them protection and screening them from the hand of justice; for as all orders for the seizure of dacoits issued by the Magistrate must be executed by the thanadars, it depends upon them whether they shall be delivered up to justice, and the most strenuous endeavours of the Magistrate are but too frequently counteracted and defeated by these men." [1] He instanced the case of a notorious dacoit leader whom the zamindar's officers had made a thanadar in

[1] Bengal Rev. Cons., 3 Dec. 1790.

return for a sum of Rs 250; for a second post he paid Rs 500.[1]

In one of his Despatches to the Court of Directors, the Governor-General-in-Council referred to "that professional and systematic marauding which from the earliest times has existed in this country."[2] This was no exaggerated description of the lawlessness which prevailed in the Company's Provinces. The frontier Districts were naturally the most disturbed—by formidable bands of marauders from the hills. In Dinajpur there were "constant insurrections," "the most flagrant instances of rebellion"; and in 1786 the Collector had to send Lieutenant Ainslie with one company of sepoys to put to flight a gang of between two and three thousand plunderers.[3] But the interior Districts, too, were never free from an alarming volume of serious crime, and the Proceedings of Government are swollen with Magistrates' reports of dacoities and murders. "The mufassal," said one, "is, in fact, almost everywhere unprotected. Murder, burglary, robbery, etc., are frequently committed and all the vigilance and activity of the Magistrate is insufficient on the present system to prevent the perpetration of them. All in fact he can now do is, on receiving intelligence of any outrage, to detach a party in pursuit of the offenders. The success, however, of the search is often precarious, and frequent escape hardens the wretches to such a degree that they soon become capable of the most daring and desperate attempts."[4] The Collector of Mymensingh stated that it was notorious that scarcely a pargana in his District was free from dacoits; one body of nearly two hundred, composed of vagrants from all parts of the Dacca province, was particularly troublesome and carried on its raids to the extent of robbing whole villages.[5] The Burdwan Magistrate became alarmed by the number of dacoities committed in broad daylight as well as under cover of darkness, by gangs large enough to be able to resist any force which could be sent them from his own headquarters. "If," he said, "they receive a check in one place they only remove to another to recommit their depredations in some more distant quarter, for they are dacoits by inheritance, trained to the profession, neither to be

[1] Bengal Rev. Jud. Cons., 7 Dec. 1792.
[2] Bengal Public Letter to Court, 25 Aug. 1792.
[3] *Dinajpur District Records*, ii, 15, ii, 114.
[4] Bengal Rev. Cons., 3 Dec. 1790.
[5] Bengal Rev. Jud. Cons., 8 Sept. 1790.

reclaimed by lenity nor deterred by punishment." He declared that unless dacoity was speedily suppressed, the inhabitants would be completely ruined and a fertile part of Bengal would again revert to wild jungle. One victim of a band of four hundred dacoits who had robbed him of property worth Rs 5,000 and had plundered and murdered other villagers, complained to the Collector that when he informed the Police the thanadar replied that he could give no assistance.[1] On 4 November 1788 two Englishmen journeying by river from Sylhet to Calcutta were attacked by nineteen boats containing nearly two thousand dacoits, some of whom, well armed with firelocks and bayonets, were disguised as sepoys in scarlet regimentals faced with green; each boat was heavily barricaded in front with buffaloes' hides to protect the occupants from musketry fire. All the property of the travellers, even to the shirts on their backs, and valued at Rs 23,000, was plundered.[2] A few weeks later, quite a respectable skirmish took place in the Sundarbands near Dacca between fourteen boatloads of dacoits and a number of armed Government vessels. The battle lasted a day and a half before the criminals surrendered.[3] Writing to Cornwallis in August 1790, the energetic Magistrate at Dacca declared that although since the previous March he had apprehended upwards of a hundred and thirty dacoits, the number of daring outrages in his District was steadily increasing.[4] Yet there was nothing exceptional about this state of affairs; for as long ago as 1774 Hastings had declared that he had had "repeated complaints from all parts of the Province, of the multitudes of dacoits who have infested it for some years past, and have been guilty of the most daring and alarming excesses." [5]

The natural features of this vast deltaic province were admirably calculated to encourage crime and make the suppression of dacoity difficult. Everywhere the country is intersected by innumerable rivers and creeks, which afforded criminals an easy means of escape from the officers of justice. The waterways of the Province were the chief means of communication, and each gang of marauders had its fleet of boats. During the rainy season much of the country was under water, and everyone travelled by boat. When the Collector of Sylhet was compelled to travel

[1] Bengal Rev. Cons., 22 Dec. 1788.
[2] *Ibid.*, 17 Dec. 1788.
[3] *The Calcutta Gazette*, 11 Dec. 1788.
[4] Bengal Rev. Cons., 25 Aug. 1790.
[5] *Ibid.*, 19 April 1774.

during these months, he steered his boat by means of a compass over what, during the dry season, was dry land, as if he were at sea, instead of being several hundred miles inland. He tells us that this temporary lake was over a hundred miles in extent. He occasionally passed through villages built on artificial mounds, but, he said, so scanty was the ground, that each house had a canoe attached to it.[1] He also tells us how he built and launched a boat of 400 tons, which, when fully loaded, drew seventeen feet of water; it was three hundred miles from the sea and at least fifty miles from any water; he relied on the monsoon flooding the country. On another occasion the river which flowed through his District rose thirty feet in a few days, overflowing its banks and sweeping every living creature before it.[2] During the rains, said the Collector of another District (Rajshahi), "the whole country is a sheet of water as far as the eye can reach."

The Police Regulations which were passed in the time of Hastings directed the Magistrates to station thanadars wherever it was considered necessary for preserving order. Thanadaries had accordingly been established, amongst other places, in the District of Tirhut, and although the Regulations of 1787 for the guidance of the Magistrates, said nothing on the subject of thanadars, the Magistrates were in general terms ordered to exert themselves to preserve the peace. In December 1787, therefore, the Collector of Tirhut drew up a plan for the establishment of thanadaries in various parts of his District, the expense to be defrayed as usual by the zamindars. But he made the important suggestion that in future the Police should be appointed and dismissed by him, and also should be paid, not by the zamindar who was to continue to provide the necessary funds, but by the Collector, who would thereby have more control over them. The expense was estimated at Rs 14,622 per annum, and an additional tax amounting on an average to one rupee four annas was to be levied on each village in the District. The Governor-

[1] *Lindsay*, iii. 166, 205–8.

[2] Bengal Rev. Cons., 19 May 1790. The Collector of Rangpur wrote to Hatch, the Collector of Dinajpur, in July 1788: "Notwithstanding the uncommon mildness of the season, almost the whole of this District is already under water." And again, "We are in your most miserable situation here, as you can well conceive. I yesterday returned from Calamatti, where I had been to see Mercer, . . . and out of seven coss, I am sure I speak within bounds when I say, we went five by water in boats over lands which two months ago promised by this time a most luxuriant harvest, which has been totally destroyed. Mercer and Chauvet coming from the opposite side of the District experienced the same inconveniences." (*Dinajpur District Records*, i, 119, 122.)

General-in-Council, to whom the Collector's proposals were referred, saw that if the plan were adopted for one District, it would probably have to be extended over the whole Province, at an estimated expense of six lakhs a year. The Board stated that the authority of the Collector or Magistrate ought to be sufficient to prevent any abuses that existed in the Police force; that the only efficacious method of preventing abuses was to punish severely any gross breach or neglect of duty; that the Collector himself should compel the zamindars to be regular in their payment of the police officers' wages, to dismiss any who had been guilty of malpractice, and to make new appointments. The proposals, said Government, were open to several objections: they destroyed the responsibility of the zamindars (in whom it was constitutionally vested) for preserving Law and order; the expense, although apparently met by the zamindars, would ultimately be chargeable to the Company since it must be paid from the lands; the mode of raising the money by the imposition of a new tax was particularly objectionable, "for experience shows that the utmost care will not prevent the imposition exceeding the limited bounds"; although the thanadars might get their salaries regularly paid by the Collector himself, yet mere regularity of payment would not prevent the Police from taking bribes and conniving at breaches of the peace; the prevention of abuses could be effected only by the infliction of punishment where merited and by a watchful superintendence over the conduct of the Police. The final conclusion of the Board was, therefore, that "notwithstanding the possible advantages attending the plan," Government was of opinion "that the system now in force should be continued; that the thanadars shall be appointed by the zamindars, be paid by them, but that the zamindars shall be obliged to dismiss them on a requisition from the Magistrate in consequence of ill behaviour and be punished themselves for negligence of their duty."[1] The Collector's proposals are important because they showed that Government was not yet prepared to accept complete responsibility for the Police of the country, that Government did not yet wish to interfere too drastically with a department of State which in theory still belonged to the Nawab. Nor at this time, it will be remembered, had the Governor-General-in-Council interfered with the administration of criminal justice.

[1] *Ibid.*, 28 Jan. 1788.

In 1790 the Magistrates were called upon to report to Government on the state of the Criminal Courts, the Gaols, and the Police. They inclined to the opinion that the responsibility of the zamindars for robberies committed within their jurisdiction should be more strictly enforced, and that rewards should be given for the apprehension of dacoits. The Collector of Rajshahi suggested, as the Burdwan Magistrate had done, that the Police should be put under the control of the Magistrates instead of the zamindars, and that the thanadars should be appointed and paid by the Magistrate.[1] But the Governor-General-in-Council, though substituting English for Indian Judges of the Criminal Courts, postponed the introduction of reforms of the Police. Cornwallis acknowledged that the inefficacy of the clause in the zamindars' engagements which made them responsible for all robberies, had long been experienced, and that too frequently the Police were in league with the criminals whom it was their duty to apprehend. He stated that the information which the Magistrates had supplied, together with the reports which the Judges of the new Courts of Circuit would submit at frequent intervals, would enable the reconstituted Court of Nizamat Adalat to frame Regulations for the reform of the Police establishments.[2]

A short time later the Collector of Burdwan again suggested to Government that the control of the Police should be transferred from the zamindars to the Magistrates, the inefficacy of the existing system having been fully illustrated in his own District during the previous two years. But again, the suggestion was not accepted.[3]

The situation in the District of Rajshahi showed the absurdity of a system which made the individual zamindari the unit of local Police administration. There were between three and four thousand talukdaris, some of them so insignificant as to pay an annual revenue of less than one rupee, all these tiny estates being " so intermixed with the zamindari lands as to make it objectionable to have a distinct establishment of Police officers for them." It was therefore highly expedient, declared the Magistrate, that the whole of the Police thanadars should be appointed and paid by the Magistrate.[4]

In April 1792 the Governor-General-in-Council began to

[1] Bengal Rev. Cons., 3 Dec. 1790.
[2] *Ibid.*
[3] Bengal Rev. Jud. Cons., 18 March 1791.
[4] *Ibid.*, 7 Dec. 1792.

improvise a temporary scheme of reform. It was felt that the zamindars ought not to be completely relieved of their responsibility for the peace and order of their estates, and that it should be retained in cases in which a zamindar had connived at robberies, harboured robbers, aided their escape, received any part of the stolen property, or omitted to give effectual aid to the officers of Government in the apprehension of offenders. But it was clear that the control of the Police must be taken from the zamindars and put into the hands of Government.

The Police Regulations of 7 December 1792 introduced a new system. The zamindars were ordered to discharge their Police and were prohibited from employing such in the future. They were no longer to be considered responsible for robberies committed on their estates except in the circumstances stated above. The English Magistrates, who were given control of the Police, were ordered to divide their Districts into areas of about 400 square miles, and each area was to be guarded by a Police Superintendent, appointed by the Magistrate, with an establishment of constables. The Superintendents were to receive a commission of 10 per cent. on the value of all stolen property which they recovered. The expense of organizing and maintaining a Police force for the whole Province was estimated to amount to Rs 3,19,440 a year, and was to be met by a small tax on the warehouses and shops in the chief towns and markets.[1]

The Regulations were confirmed in the Code of May 1793, with one important amendment. The Police were rendered liable to civil or criminal prosecutions for illegal acts done in their official capacity.

These reforms did not prove as successful as Cornwallis had hoped and anticipated: the reasons for their partial failure will be briefly examined in a subsequent Chapter.

3. The Gaols

The condition of the prisons in all civilized countries reflects the attitude of society towards the criminal classes. Until the humanitarian zeal of Cornwallis and his assistants directed the attention of the Supreme Council to the deplorable state of the

[1] Bengal Rev. Jud. Cons., 7 Dec. 1792; I.O.R., *Home Misc.*, Vol. 380. In the *Cambridge History of India* (v, 452) it is stated that these provisional reforms of the mufassal police were confirmed from home early in 1793—but the Directors' Despatch (25 Feb. 1793) referred merely to the reform of the Calcutta police.

gaols, the Government of Bengal paid little attention to the problem of prison administration, and left numerous evils unremedied.

Until 1790 the prisons, being part of the Faujdari Department, were under the general management of the Nain Nazim and his subordinates, the Judges of the Faujdari Courts. The Regulations passed by the Governor-General-in-Council on 27 June 1787 for the guidance of the Magistrates required the Judges of the Criminal Courts to furnish the Magistrates with a list of all prisoners confined in the Faujdari gaols, the number of discharges, deaths and escapes, the crimes of which each was guilty, the date of the commencement of each sentence. The Magistrates were ordered to inspect the gaols at least once a month and to report to the Governor-General-in-Council cases of ill-treatment of prisoners, so that the necessary representations might be made to the Naib Nazim.[1]

The English Magistrates whom Cornwallis instructed in 1790 to report on the state of the administration of criminal justice, gave some account of prison conditions too. Many abuses were brought to the notice of Government. The Judges were in the habit of confining accused persons for long periods before bringing them to trial; their subordinates, the thanadars, frequently imprisoned people without any show of legality. According to some Magistrates, the gaol authorities treated their prisoners with great severity; in one case it was stated that the men were deprived of part of their food rations and were denied the ordinary comforts of washing and shaving.[2] In 1786 more men had died of disease in one single gaol than were capitally punished in the whole Province [3]; of forty-six dacoits committed for trial by the Burdwan Magistrate in December 1789, thirteen died in prison before the trials ended three months later.[4] In 1780 the Supreme Council had declared that for a European, two months' imprisonment in the foul air of the Calcutta gaol would be equal to a direct sentence of death.[5] The Burdwan gaol was terribly overcrowded, and the prisoners were actually in want of the necessaries of life, their subsistence allowances not having been received from Murshidabad for several months.[6] Conditions, however, varied, and the majority of the Magistrates reported that

[1] Bengal Rev. Cons., 27 June 1787. [2] *Ibid.*, 3 Dec. 1790.
[3] P.R.O., Cornwallis Papers, Packet 10.
[4] Bengal Rev. Cons., 3 Dec. 1790.
[5] *Bengal, Past and Present*, xxxv, 150. [6] Bengal Rev. Cons., 10 June 1789.

the prisoners whom they had seen were sufficiently well treated and were kept clean. At Birbhum they were kept scrupulously clean and were for the most part in good health. At Bhagalpur the Magistrate said that the prisoners were leniently treated and that their confinement was rendered as little irksome as was consistent with their situation.[1] The Collector of the Twenty-four Parganas stated that the prisoners were regularly washed, and that those who had the means were allowed to make purchases, under escort, in the bazaar; whilst the sick were separated from the rest.[2] At Gaya, however, the prisoners, besides being overcrowded, had no proper medical attention; since gaol administration was not in the Company's hands the Company's surgeon was not required to attend them.[2]

In April 1788 the Governor-General-in-Council announced that it was not the intention of Government to build gaols with expensive materials or to erect permanent buildings.[3] Pucca buildings, though more costly than those of mud and straw, were, however, cheap enough. Two qualities of bricks were used: pucca bricks cost Rs 3 a thousand; cutcha bricks, which heavy rain would sometimes disintegrate, cost Rs 2/8 a thousand. The Magistrate at Chittra, submitting a bill for Rs 3,827 incurred in building a pucca gaol at Ramghar, included an item for Rs 150, the cost of 100,000 bricks that had been destroyed by storms between 21 and 27 January 1788.[4] A pucca gaol would be surrounded by a pucca wall, perhaps fourteen feet high and eighteen inches thick, solid brick masonry costing eight annas per square foot.[5] Sometimes Government found it more convenient to rent than to build a gaol. The one at Dacca was hired for Rs 30 a month, the Diwani gaol at Murshidabad for Rs 15.[6]

Gaols built of mud, bamboos and straw were very expensive to repair, though their initial cost was low. They were unhealthy, insecure, and very liable to be destroyed by storms or fire. Many of the Bengal gaols were burnt down between 1786 and 1793, and one was gutted three times during that short period. In 1789 a disastrous fire broke out in the Faujdari gaol at Chaplia, and although everything possible was done to extricate the terrified prisoners, the flames, fanned by a strong breeze, spread so rapidly that the place was soon a roaring furnace, and out of

[1] *Ibid.*, 3 Dec. 1790.
[2] *Ibid.*
[3] *Ibid.*, 23 April 1788.
[4] *Ibid.*, 8 Sept. 1788.
[5] *Ibid.*, 23 Dec. 1789.
[6] *Ibid.*, 29 Jan. 1787; 27 Jan. 1790.

444 prisoners 211 were either suffocated or roasted. When day dawned the bodies were seen piled up in a heap a yard and a half high.[1] On 27 October 1790 the convicts at Gaya made a daring attempt to escape. Heavy rains coming at the very end of the monsoon had partially washed away the prison walls. The prisoners' wives surreptitiously supplied the means of filing off the iron fetters; the men attacked the warders and sentinels, who, after a desperate struggle in the darkness, were overpowered, and when morning came 132 prisoners were missing. By the 30th only 22 had been recaptured.[2]

Many gaols were terribly overcrowded, and criminals and debtors, men and women, were often confined in the same building and even in the same room. The prison in the Sylhet District was so small that it would hold only the debtors; the faujdari prisoners were kept in a small mosque that was said to be damp and unhealthy.[3] The gaol at Murshidabad was tumbling down, the stench during the hot weather was abominable, and the prisoners, crowded in a small space, were kept alive only by being frequently washed.[4] The gaol at Chittra, declared the Magistrate, was in so ruinous a state as to be in imminent danger of collapsing altogether when the rains set in.[5] Three times within twelve months prisoners had escaped by cutting holes through the surrounding mud wall, and they had also set the place on fire in the hope of being able to escape during the confusion.[5] The posts that supported the walls of the Diwani prison at Rangpur had rotted in the marshy ground, and the building was blown down in a violent gale in May 1790.[6] It was a new building, and though the Collector had paid the bills, he had not had time to apply to Government to be reimbursed before the gale levelled the prison with the ground, so that his application was accompanied by a new estimate for another building.[7] In June 1785 the rooms in the Calcutta gaol were knee deep in water, the floors being on a lower level than the surrounding land; many of the inmates were quite naked.[8] The gaols in the Province, consisting almost invariably of mud walls and straw-thatched roofs, were built at very little cost; the labour charges in particular being negligible. A faujdari gaol at Tirhut cost Rs 271.[9] The new Diwani gaol at

[1] Bengal Rev. Cons., 16 Dec. 1789.
[2] *Ibid.*, 10 Nov. 1790.
[3] *Ibid.*, 23 April 1788.
[4] *Ibid.*, 31 Dec. 1788.
[5] *Ibid.*, 30 March 1787.
[6] *Ibid.*, 16 June 1790.
[7] Bengal Board of Rev. Cons., 28 June 1790.
[8] Bengal Public Cons., 30 Aug. 1785.
[9] Bengal Rev. Cons., 1 April 1789.

Chittra was rebuilt for Rs 142, the chief items of expenditure being Rs 28/2 for 5,000 bamboos, Rs 42 for 600 bundles of straw, and Rs 40 for labour.[1] The fact that a new building was destroyed by the first gale that blew up, and that another gaol erected in October had to be repaired in November (at Rajshahi in 1787) [2] shows how flimsily they were constructed at this time. The combined Diwani and Faujdari gaol at Rajshahi cost Rs 625. One hundred and seventy carpenters were employed, each being paid a fraction less than three annas; 35 blacksmiths were each paid two annas, and 768 coolies shared Rs 90.[3]

The Regulations of 3 December 1790 transferred the management and control of the gaols from Indian to European hands; the Magistrate was put in charge of the gaols in his District.[4] He was commanded to inspect them at least once a month, and to redress all valid complaints. He was to pay special attention to the health and cleanliness of the prisoners, who were to be attended when sick by the Company's surgeon. Prisoners under sentence of death, those sentenced to a term of imprisonment by the Court of Circuit, those committed for trial, and those sentenced to short terms by the Magistrate for petty offences, were to be confined in separate parts of the gaol, one for each grade of prisoner. The Judges of the Courts of Circuit, too, were required to visit each gaol and to issue such orders to the Magistrate as were calculated to improve unsatisfactory conditions.

The failure of these Regulations to improve the state of the prisons, compelled Government in 1792 to make further provisions, after some alarming reports from the Magistrates had been received. The gaols in the Shahabad District, for example, were said to be wretched beyond description. The faujdari gaol, consisting of one small room with mud walls, confined prisoners of every class, who, for safety, were not only fettered at night but also put in stocks. "It may easily be conceived," said the Magistrate, "that in such a building deprived of a free circulation of air, the noxious vapours arising from the filth and stench of such a number of prisoners, must render it very unhealthy; so much so that since the setting in of the hot season I have been obliged to remove the sick lest infection should become general."[5] At Sarcar Sarun the prisoners were exposed "to all the baneful effects of the noxious

[1] *Ibid.*, 3 June 1789. [2] *Ibid.*, 15 Aug. 1788. [3] *Ibid.*
[4] *Ibid.*, 3 Dec. 1790. [5] Bengal Rev. Jud. Cons., 21 Sept. 1792.

effluvias which naturally fly off from the bodies of many persons closely pent up in small apartments, deprived of a free circulation of air, tormented day and night with various species of reptiles, vermin and insects which, engendered in the filth, nastiness and thatch of this miserable habitation, come forth in swarms at this season of the year." [1] The Diwani gaol at Murshidabad was in such bad repair that, situated near the bank of the river, it was in danger of being completely swept away during the rainy season as soon as the river rose above its normal level.[1] The Tippera Magistrate declared that the necessity of keeping the prisoners of his District in stocks made their lives truly miserable.[2] In 1791 179 prisoners were confined in a room 72 by 48 feet; at night their feet were locked in stocks, and each person was allowed a space of 25 inches. The floor, of damp earth, was filthy. Many prisoners were so enfeebled either by old age or sickness that they could scarcely support the weight of the chains which ensured their safety during the day. They cooked their food in this room, to which there was only one door. They were supplied with water from a small dirty tank. The gaol was built on low, marshy, unhealthy ground, and deaths were naturally frequent. Under-trial prisoners were confined indiscriminately with murderers.[3]

Cornwallis declared that humanity cried out for a remedy. In December 1792 he informed the Court of Directors that he had resolved to rebuild all the gaols in the Province, in such a style that the health and morals, as well as the safety, of the prisoners would be secured. The initial expenditure, he said, would be great, but, if constructed of durable materials, the new prisons would be kept in repair at a trifling cost, whereas the annual charges for the upkeep of temporary buildings had been considerable. Five brick prisons were to be built each year until the whole were completed. The plans provided for the segregation of the sexes, of different descriptions of prisoners according to the Regulations of 3 December 1790, and also of prisoners of different religious persuasions.[4]

Before leaving India therefore Cornwallis had initiated substantial measures of prison reform, and the worst abuses that had disgraced the administration of the Bengal gaols were eradicated.

[1] Bengal Rev. Jud. Cons., 21 Sept. 1792. [2] *Ibid.*, 11 March 1791.
[3] *Ibid.*, 25 Feb. 1791.
[4] *Ibid.*, 5 Oct. 1792; Bengal Public Letter to Court, 12 Dec. 1792.

CHAPTER VII

THE WORKING OF THE JUDICIAL REFORMS

IN October 1793 the task of carrying Cornwallis's reforms into execution devolved on Shore. "The judicial system proceeds well," he wrote at the end of 1794. "I am satisfied that his Lordship's plan was solid, wise, and has proved beneficial to the country."[1] Two considerable difficulties, however, had already arisen. The reforms greatly increased the number of civil appeals, and the Courts of Appeal were overloaded with business. There had also been trouble in securing a sufficient number of qualified officers to fill the judicial posts.[1]

Further experience proved that the reforms were not working so smoothly as Cornwallis and Shore had expected. The abolition of the fees formerly payable upon the institution of a suit, and the extension of the right of appeal, had encouraged litigation. The accumulation of business was such that the course of justice was threatened with a complete stoppage. It was said that in the Burdwan District alone, the number of undecided causes was thirty thousand, and the probability of any suit being decided was estimated to exceed the duration of life. The delay experienced in settling disputes relating to the public revenue, which were now decided, not by the Collector, but by the Civil Judge, affected the interests, not merely of individuals, but of Government, and the application of some effectual remedy became a matter of urgent necessity.

The remedy which Government in its wisdom dictated was worse than the disease. Instead of trying to increase the number of Courts, an attempt was made to discourage litigation by the revival in 1795 of the iniquitous deposit fees, and two years later they were considerably increased. The expenses of process in the Courts were also increased by direct taxation, a new Regulation requiring that all proceedings should be written on stamped

[1] *Shore Correspondence*, i, 310.

paper.[1] In 1797 the right of appeal was limited. But in 1802 there were still over 160,000 cases undecided; and the Judges of the Murshidabad Court of Appeal stated that the imposition of fees payable on the institution of suits, and of stamp duties, had failed to check litigation. On the contrary, they declared, litigation had actually been encouraged thereby, in the hope that the certainty of the expense, added to the uncertainty of the result, might deter parties from defending even just rights.

G. R. Gleig, the biographer, and James Mill, the historian of British India, severely criticized the judicial reforms of 1793, on the ground that they violated Indian usage. They were, it was asserted, based on abstract theories drawn from the experience of western countries, and applicable to a society very different from that which existed in Bengal at the close of the eighteenth century. The reforms carried the right of appeal to an absurd length; and the over-elaboration of procedure, too, clogged the wheels of justice. Gleig denounced Cornwallis as a mere theorist surrounded by theorists, and condemned him for abolishing the ancient judicial system. But, although some of his criticisms were well-founded, it is relevant to point out that Gleig never saw the evidence of the corruption of the Indian officials and the essential rottenness of the old order of things—for the Magistrates' reports of 1790 have never been printed. And Gleig had to admit that Cornwallis had honestly striven to adhere so far as was practicable to primitive custom. It is true, indeed, that the reforms were based on the principles and practice of English Law, and that the highly elaborate procedure, copied from that of Westminster Hall, retarded the business of the Courts. But the Code of procedure adopted by Cornwallis in 1787 and 1793 was based directly on that which Hastings and Sir Elijah Impey had previously elaborated; that being the case, it was obviously unfair to throw the blame for whatever defects might be inherent in that Code, exclusively on Cornwallis. And in spite of its defects, the new system was infinitely better than that which was

[1] Shore greatly disliked the tax on shops and warehouses which had been levied since 1792 for the maintenance of the Bengal police. He declared it to be as oppressive in practice as it was objectionable in principle. It was the imposition of stamp duties in 1797 which enabled him to abandon the police tax in 1797 without loss to the revenue. His letters to Dundas (10 January and 20 May 1797) show that he regarded this as a very beneficial reform. The change was made during his absence at Lucknow, but with his consent, and he considered that the Regulation might very well be greatly extended. (Melville Papers.)

destroyed in 1790 and 1793. Trials were now conducted in a regular, decorous and impartial manner, and the integrity of the Judges was unchallenged and unchallengeable.

The Fifth Report (1812) of the Committee of the House of Commons appointed to inquire into the affairs of the East India Company, declared that Cornwallis's reorganization of the Police had proved the least successful of his reforms. Crime greatly increased in volume after 1793, and the Police were largely to blame, although the natural features of the country, everywhere intersected by rivers and covered with dense jungle, made the suppression of crime peculiarly difficult. The Police were still badly paid, and a poor type of man was recruited. "It is to the daroga and ten or a dozen subordinate officers, each in all respects inferior to a parish constable in England, that we commit the care of preserving the peace of a district two or three hundred square miles in extent, and often containing a hundred thousand inhabitants," wrote one of the Judges in 1802. It is hardly matter of surprise, therefore, that crime increased. The number of persons tried by the Murshidabad Court of Circuit increased from 1,674 in the year 1794 to 2,201 in 1801. Of a hundred dacoits, said the Midnapur Magistrate, ten are arrested and perhaps not two convicted. "It is literally true," he wrote, "that the lives and property of the ryots are insecure, and, according to the common expression among the natives, that they do not sleep in tranquillity."

Another Judge reported: "The darogas, I believe it is generally confessed, do not perform the duty that was expected; they are clearly either unable or unwilling; they do not appear to be often guilty of gross criminal malversation, such as harbouring and conniving at, aiding and abetting dacoits, receiving stolen goods, or releasing prisoners. Their insufficiency consists, I think, in a general neglect of duty, in petty rogueries, in a want of respectability, in being destitute of that energy and activity, that delicate sensibility to character, which ought to characterize a police officer. In the duties of his office, a daroga is hardly occupied half an hour a day, and he often becomes negligent, indolent, and in the end, corrupt. His dishonesty consists in taking bribes from poor people who have petty faujdari suits, in conniving at the absconding of persons summoned through him, in harassing ryots with threats or pretended complaints, creating vexatious delays in settling disputes, or preventing their being

settled by razinama; and chiefly in deceiving the poor and ignorant with whom he has to deal." Cornwallis was partly to blame for paying the Police Superintendents such small salaries. In 1807 it became necessary to re-invest a number of zamindars and other landholders with powers of police jurisdiction: a reversion to the practice of 1792 which Cornwallis had so severely criticized.

The evils which his reforms created or left unremedied were therefore in many cases similar to those which he had so unsparingly condemned in 1790. Accused persons continued to be kept in prison for several months before being brought to trial, although, on the other hand, these delays in the administration of justice were now to be attributed, no longer to the corruption or negligence of the officials, but to the extraordinary pressure of business. The reforms of 1793 failed to reduce the amount of crime. It was a common saying among the people that the gentlemen require so much evidence that it is nearly impossible to convict a dacoit. The new Police force, supervised by the European Magistrates, was hardly more efficient and less corrupt than the body of men who had been under the control of Indian Judges and zamindars. The discretionary mode in which the Muhammadan Criminal Law was still administered, caused the evil of disproportionate sentences to flourish. "An offence which to one law-officer may appear sufficiently punished by a month's imprisonment," wrote the Murshidabad Circuit Judges in 1802, "shall from another law-officer incur a sentence of three or four years. Even in the heinous crime of gang-robbery, our records will show sometimes a sentence of fourteen years' transportation, and sometimes a sentence of two years' confinement. Though every criminal code must leave some discretion of punishment to the Courts, particularly in the smaller offences and breaches of the peace, yet in crimes of enormity, we think that the punishment ought to be specific, at least that some limit should be fixed to discretion." The Supreme Court of Judicature in Calcutta, which administered English, not Indian, Criminal Law, often hanged a felon who, had he been tried in the mufassal, would have been sentenced only to a short term of imprisonment.

Although the integrity of the English Judges was unquestioned, and though they were selected from amongst the ablest and most experienced of the Company's servants, within twelve years of the reforms of 1790 which substituted European for Indian Judges

of the Criminal Courts, the question was seriously raised whether, after all, Indian Judges might not in many respects be more competent. The European Judges themselves began to challenge the unsympathetic attitude towards the Indian official which Cornwallis had taken up, and men in the service were veering round to the Hastings' point of view. The Midnapur Judge declared in 1802 that in many respects Europeans were necessarily ill-qualified to sit on the Bench. "Nothing," he said, "is more common, even after a minute and laborious examination of evidence on both sides, for the Judge to be left in utter doubt respecting the point at issue. This proceeds chiefly from our very imperfect connexion with the natives, and our scanty knowledge, after all our study, of their manners, customs, and languages. Within these few years, too, the natives have attained a sort of legal knowledge, as it is called, that is to say, a skill in the arts of collusion, intrigue, perjury, and subornation, which enables them to perplex and baffle us with infinite facility. . . . I am inclined to think that an intelligent native is better qualified to preside at a trial than we can ever be ourselves. . . . I confess it is my wish, though possibly I may be blamed for expressing it, not only to have the authority of the natives as Judges extended, but to see them, if possible, enjoy important and confidential situations in other Departments of the State." "Some are of opinion," he added, "that the more power the natives have, the more they abuse it—that they are utterly unfit for any but the lowest employments, and that however great their salaries, moderation and disinterestedness can never be expected from them. This appears to me a mere fallacy. A few objections may suggest themselves to my proposition of investing the darogas with authority to decide civil suits; but no solid ones occur to me."

Nine-tenths of the civil causes (all, that is, to the amount of Rs 50) throughout the country were decided by Indian commissioners, in accordance with Regulation XL, 1793. And, according to the Judge and Magistrate of Midnapur, they did their work with remarkable efficiency. The commissioner, he said, "decides with the greatest ease a vast number of causes. He is perfectly acquainted with the language, the manners and even the persons and characters of almost all who come before him. Hence perjury is very uncommon in his Court. To us, his proceedings may appear frequently tedious or frivolous, and generally irregular and informal; but we are very apt to judge

from a false standard. I am fully convinced that a native of common capacity will, after a little experience, examine witnesses and investigate the most intricate case with more temper and perseverance, with more ability and effect, than almost any European." The Magistrate expressed the hope that Government would empower the Indian Commissioner to hear and decide causes to almost any amount.

The gravest defects of the Cornwallis Code were that it was based upon a mistaken principle: it was grounded on the persuasion that Indians were unworthy of trust, and that they could not be allowed to fill any but the humblest offices under Government. But sweepingly to assert, as did Gleig, that "a system was produced which, violating every native prejudice, overthrowing every native institution, and contradicting every native idea of right and wrong, failed to satisfy either the wants of the people or the hopes and expectations of their rulers," was to be guilty of gross exaggeration and of a lack of appreciation of the benefits which the reforms actually conferred. "The Code," wrote Seton-Karr in his short study of Cornwallis, "defined and set bounds to authority, created procedure, by a regular system of appeal guarded against the miscarriage of justice, and founded the Civil Service as it exists to-day."[1]

[1] *Life of Cornwallis*, p. 95. The chief authority for this chapter is the Fifth Report of 1812.

CHAPTER VIII

THE WORK OF SIR WILLIAM JONES

NO survey of the administration of Lord Cornwallis would be complete without some reference to Sir William Jones and his codification of Indian law. In 1783, at the age of thirty-six, he was appointed a Judge of the Supreme Court of Judicature at Calcutta. Master of many European languages before he left England, he acquired, during his residence in the East, an even greater reputation as an oriental scholar than he had had at home as a linguist. His extensive and diversified researches into the literature and philosophy of the East have given him a distinguished place in the annals of oriental learning.

In January 1784, soon after his arrival in Calcutta, he founded, on the plan of the Royal Society, the celebrated Bengal Asiatic Society, with the object of studying the history, antiquities, literature, arts, sciences, and natural productions of the East. Hastings politely declined the office of President, saying that Sir William Jones was much more capable of filling it. Sir William was then elected, and filled the position with great distinction until his premature death ten years later.[1]

Before leaving England he had published a translation of a tract on the Muhammadan Law of Inheritance written by the lawyer Zaid; and as soon as he had settled down in Calcutta he began diligently to concentrate on the study of Indian jurisprudence. His motives in so doing were twofold.

It was one of his cardinal principles that the people of Bengal should be allowed to retain their own civil laws, and that their religious feelings and immemorial social and religious usages ought to be scrupulously respected. "Nothing, indeed, could be more obviously just," he wrote, "than to determine private con-

[1] *Asiatic Researches* (Transactions of the Bengal Asiatic Society), vol. i; *Works of Sir William Jones*, ii, 15 (1807).

tests according to those laws which the parties themselves had ever considered as the rules of their conduct and engagements in civil life; nor could anything be wiser than, by a legislative act, to assure the Hindu and Mussulman subjects of Great Britain that the private laws which they severally hold sacred, and a violation of which they would have thought the most grievous oppression, should not be superseded by a new system of which they could have no knowledge, and which they must have considered as imposed on them by a spirit of rigour and intolerance." [1] All laws which Parliament might enact for the administration of justice in British India, he considered, should be conformable to the manners and usages of the people. That object could not be attained until English legislators became better acquainted with Indian customs and Indian law books.[2]

Further, he soon discovered that for the proper performance of his judicial duties he required to possess an extensive knowledge of Hindu and Muhammadan Law, which the Regulating Act of 1773 had ordained should be administered in matters appertaining to inheritance, succession and contract, for the benefit of Hindu and Muhammadan litigants.[3] He observed that English Judges and Magistrates, so long as they remained ignorant of the Persian and Sanskrit languages, could never feel quite sure that they were not being deceived by the Indian law-officers whose duty was to expound the law. He declared that he could not bear to be at the mercy of his pandits, "who deal out Hindu Law as they please, and make it at reasonable rates when they cannot find it ready-made." [4] He admitted that it would be absurd to censure the whole body of Indian law-officers indiscriminately, but, he said, "my experience justifies me in declaring that I could not with an easy conscience concur in a decision merely on the written opinion of native lawyers in any cause in which they could have the remotest interest in misleading the Court; nor how vigilant soever we might be would it be very difficult for them to mislead us, for a single obscure text, explained by themselves, might be quoted as express authority, though perhaps in the very book from which it was selected, it might be differently explained, or introduced only for the purpose of being exploded." [5] And

[1] B.M. Add. MSS. 29171, fo. 162. Jones to Cornwallis, 19 March 1788.
[2] Sir W. Jones, *Institutes of Hindu Law*, Preface.
[3] Sir W. Jones, *The Mahomedan Law of Succession to the Property of Intestates*, Preface.
[4] Teignmouth, *Life of Sir W. Jones*, ii, 67. [5] *Ibid.*, ii, 142.

again, in his Preface to a translation of the Muhammadan Law of Succession to the property of Intestates, published in 1792, he wrote: "perpetual references to native lawyers must always be inconvenient and precarious, since the solidity of their answers must depend on their integrity as well as their learning and at best, if they be neither influenced nor ignorant, the Court will not in truth *hear and determine* the cause (as the Act of Parliament had ordained) but merely pronounce judgment on the report of other men." [1]

The danger could be avoided only by having the Hindu and Muhammadan Laws translated into English. Before leaving home he had discussed this subject with some of his friends in Parliament and the Judges in Westminster Hall.[2] In 1785 he completed a version from the Arabic of the *Al Sirajiyah*, or the Muhammadan Law of Inheritance, but it was not published until later.[3]

In 1788 the Governor-General-in-Council announced to the Court of Directors that Sir William Jones had voluntarily undertaken the work of compiling a Digest of Hindu and Muhammadan Law, with an English translation.[4] He unfolded his design in a letter to Lord Cornwallis dated 19 March. He asked for financial assistance, so that the necessary number of pandits and maulvis might be appointed to aid him in his task. The Board, thanking him for his offer, had no hesitation in promising the necessary funds.[5] He described it as a work of national honour and utility. "It would not be unworthy of a British Government," he wrote, "to give the natives of these Indian provinces a permanent security for the due administration of justice among them similar to that which Justinian gave to his Greek and Roman subjects." The compilation was to be confined to the Law of Contract and Inheritance, which, he said, "are of the most extensive use in private life, and to which the Legislature has limited the decisions of the Supreme Court in causes between native parties." [6]

He estimated that the work would take three years. He himself selected his Indian assistants. But the task took longer to complete than he had anticipated, for his professional duties occupied a great part of his time, and his unwearied application

[1] Jones, *The Mahomedan Law of Succession to the Property of Intestates*, Preface.
[2] Teignmouth, *Life of Sir W. Jones*, ii, 142.
[3] In 1792. [4] Bengal Public Letter to Court, 6 Nov. 1788.
[5] Bengal Public Cons., 19 March 1788. [6] *Life*, ii, 145.

to study during the Vacations gradually undermined his health. In 1792 he published his translations of the Muhammadan Law of Succession to the Property of Intestates, and the Muhammadan Law of Inheritance.[1] These two works had previously been translated into Persian by Hastings' order, but the translation was found to be defective. "The text and comment are blended without any discrimination," wrote Sir William Jones, "and both are so intermixed with the notes of the translator himself that it is often impossible to separate what is fixed law from what is merely his own opinion; he has also erred . . . on the side of clearness, and has made his work so tediously perspicuous that it fills, inclusively of a turgid and flowery dedication, about six hundred pages, and a faithful version of it in English would occupy a very large volume." [2]

He published his Institutes of Hindu Law, or the Ordinances of Manu, early in 1794.[3] They are revered, he said, "by many millions of Hindu subjects, whose well-directed industry would add largely to the wealth of Britain, and who ask no more in return than protection for their persons and places of abode, justice in their temporal concerns, indulgence to the prejudices of their old religion, and the benefit of those laws, which they have been taught to believe sacred, and which alone they can possibly comprehend." [4] Sending a manuscript copy of his translation to the Governor-General-in-Council in June 1793 he expressed the hope that the Digest would be completed with an introductory discourse within two years.[5] On 1 March 1794 he informed Dundas that the remaining two volumes (which would make nine in all) would probably be ready by 1796, and that after he had finished this work he should resign his Judgeship and spend the rest of his days "in studious retirement" at home.[6] But Sir William Jones himself did not live to see the completion of his

[1] Bengal Public Cons., 9 Nov. 1792, No. 30.

[2] Sir W. Jones, *The Muhammadan Law of Inheritance*, Preface.

[3] Teignmouth, *Life of Sir W. Jones*, ii, 223. He described it as a tract of "great intrinsic merit, and extremely curious, which the Hindus believe to be almost as old as the Creation. It is ascribed to Manu, the Minos of India, and, like him, the son of Jove" (*Ibid.*, ii, 99). And Shore wrote: "Manu is esteemed by the Hindus the first of created beings, and not the oldest only, but the holiest of legislators; and his system is so comprehensive and so minutely exact, that it may be considered as an institute of Hindu Law, prefatory to the more copious Digest" (*Ibid.*, ii, 223).

[4] Sir W. Jones, *Institutes of Hindu Law*, Preface.

[5] Bengal Public Cons., 11 June 1793.

[6] *Works of Sir W. Jones*, viii, 157. Also Melville Papers.

magnum opus, for death cut short his career on 27 April 1794 at the early age of forty-seven.[1]

In 1796 the Court of Directors resolved to erect a monument in St. Paul's Cathedral to his memory, and to send to Bengal a statue of Sir William, with a suitable inscription.[2] Sir John Shore, who succeeded him as President of the Bengal Asiatic Society, pronounced a fitting eulogy on him at the meeting of the Society on 22 May 1794.[3] Sir William Jones was one of the greatest linguists of the eighteenth century. He knew thirteen languages intimately and had a fair knowledge of twenty-eight others. "Many of the most learned Asiatics," remarked the Governor-General, "have the candour to avow that his knowledge of Arabic and Persian was as accurate and as extensive as their own."[4] The most celebrated historian of the age said of him, "Sir William Jones is perhaps the only lawyer equally conversant with the Year Books of Westminster, the Commentaries of Ulpian, the Attic pleadings of Isaeus, and the Sentences of Arabic and Persian Kadis."[5] His devoted labour for the advancement of the study of oriental languages, institutions and culture, by Europeans, though prematurely cut short, was destined to have fruitful results, and the Society which he founded and helped to make famous, is the best monument to his genius.

The extent to which he contributed to Cornwallis's judicial reforms has recently been somewhat exaggerated. In the *Cambridge History of India* it is stated that he was the Governor-General's chief adviser in judicial matters, and that he gave full aid in the reform of the judicial administration and in the regulation of the police.[6] He gave Cornwallis valuable assistance in preparing plans to reorganize the police force of Calcutta, since, as Justices of the Peace for the town of Calcutta he and the other Judges of the Supreme Court were responsible for the maintenance of law and order. But there is no evidence to show that he helped the Governor-General-in-Council to reform the provincial police. As for the reform of the provincial criminal courts and

[1] It is wrongly stated in the *Cambridge History of India* (v, 461) that he died in 1795. The Digest of Hindu Law was finished in the original Sanskrit and Arabic, but the translation was incomplete at the time of his death (Bengal Public Cons., 2 May 1794). Colebrooke afterwards completed the work.

[2] Bengal Public Letter from Court, 27 July 1796.

[3] *Works of Sir W. Jones*, iii, pp. i-xxi.

[4] *Ibid.*, iii, p. iv.

[5] *Ibid.*, iii, p. xiv.

[6] *Cambridge History of India*, v, 436.

the criminal law, it is true that Cornwallis submitted to Sir William Jones his Minute of 3 December 1790 a fortnight before it was formally accepted by the Governor-General-in-Council, and Sir William found nothing in the propositions to which he could object; but it is unlikely that he had taken any part in working out this scheme of reform: there is no evidence to justify the supposition that he had. Cornwallis's chief advisers in judicial matters were the Magistrate-Collectors, on whose reports, as we have seen, the reform of the provincial criminal courts and of the Muhammadan Law was based.

It has been further stated, with references to the changes made in the administration of criminal justice on 3 December 1790, that other changes "were left over until further advance had been made in the researches of Sir William Jones." [1] But the reason why Cornwallis refrained from making additional changes which he considered to be really required, was his anxiety to avoid offending the susceptibilities of the people. And Sir William Jones was undertaking no research work into Muhammadan criminal jurisprudence.

[1] *Cambridge History of India*, v, 445.

CHAPTER IX

THE DISTRICT OFFICER [1]

THE present-day office of Collector [2] dates back to 1772, when Warren Hastings created the Collectorship. Fifteen years after the Battle of Plassey, and seven years after the Diwani had been given to the East India Company, Hastings, the newly-appointed Governor of Bengal, was ordered by the Court of Directors to appoint Company's servants to the charge of the Districts. Hastings assumed that the policy of taking direct responsibility for revenue collection implied the assumption of direct responsibility for the other branches of administration, particularly the administration of civil and criminal justice, and the Police. In 1774, however, the Collectors were withdrawn and recalled to the Presidency, their place being taken by six Provincial Councils of Revenue stationed at Calcutta, Murshidabad, Dacca, Patna, Burdwan and Purnia: each Council consisted of a Chief and four members. This arrangement lasted only until 1781, when the control of revenue administration was centralized at the Presidency in the hands of a Committee of Revenue (styled Board of Revenue in 1786) composed of four covenanted servants. It was the ultimate intention of Hastings to withdraw the Collectors entirely from the Districts, and to render as general as possible the mode of paying the revenue direct at the Presidency, thus abolishing the intermediate agency between the Government and the landholders, which was said to encourage oppression and extortion. It might reasonably be supposed that the fewer the agents employed by the Company in remitting the revenues to Calcutta, the less would be the expense incurred by the zamindars; on the other hand the landholders would have to bear the expense of

[1] In order to give this chapter a unity of its own, a few facts mentioned in earlier chapters have been repeated.

[2] In Burma and some other Provinces, the Collector, or District Officer, is known as the Deputy Commissioner.

employing vakils to transact their business at the Presidency. Nor was a Revenue Board, permanently stationed at the Presidency, at all well-informed about the state of the Districts. If a landholder pleaded for a remission of revenue on account of flood, drought or pestilence, an Indian official would have to be sent from the Board of Revenue to investigate the matter. He might easily be bribed by the zamindar to exaggerate the loss which had been sustained; if, on the other hand, the official refused to recommend a remission, the landholder might easily be ruined.

It was not until 1786 that the Court of Directors came to a final decision on the question of retaining or withdrawing the Collector. They accepted the advice which had been given at different times by such different men as Philip Francis, Shore, Stuart, and Macpherson, that the Collector should be retained as a permanent feature of local administration. It was felt that not only would the work of revenue collection be facilitated by the presence of an expert official in the District, but also the sovereignty of the Company and the power of the Executive Government would be strengthened, the access to justice would be facilitated, and the people would be better protected. So on 12 April 1786 the Directors informed the Governor-General-in-Council that the Collectorship was to be regarded as a permanent part of the structure of local administration.[1]

The District Officer was the highest local official acting under the orders of the Supreme Council and the Board of Revenue in Calcutta. The territory which he administered exceeded most of the English counties in size, and contained a population greater than that of either Wales or Scotland in the eighteenth century. The District was then, and it has remained, the unit of local administration. English traditions of local administration, based on the principles of decentralization and the responsibility of the official to the popularly elected members of the municipal council or the district board, were not introduced into Bengal, and the District Officer had no counterpart in self-governing England. Under the administration of the East India Company, the Mughal tradition of absolutism was maintained: the tradition, that is, that power is concentrated in the hands of one man; that the Collector was solely responsible for the general well-being of the hundreds of thousands of people under

[1] Bengal Revenue Letter from Court, 12 April 1786.

his charge. The nearest counterpart of the District Officer in European administration was the Intendant of eighteenth-century France: an official who collected the direct taxes and who was responsible for the maintenance of public order, for public works and for the relief of the poor; a bureaucrat appointed by, and responsible to, the Central Government, he exercised the same absolute authority over his district as did the Controller-General in Paris over the whole country. Within his jurisdiction, said Shore, the Collector "should be considered as despotic."[1] Despotism, however, was not incompatible with the perfect security of the rights and property of the people and with the free enjoyment of their own ancient customs and institutions; and it was felt that so long as the people were treated humanely and justly, they would acquiesce in the continuance of that absolutist form of government to which for centuries they had been accustomed. So the Court of Directors, acting on the advice of a majority of the members of the Governor-General's Council, came to the conclusion that the work of administration could best be carried on by concentrating authority and responsibility in the hands of a single individual, and, in 1786, ordered the Supreme Council to combine in the person of the Collector, the offices of revenue administrator, Civil Judge, and Magistrate. In the time of Cornwallis the District Officer enjoyed greater authority than the Collector to-day, for until 1793 his powers were very inadequately limited by Government Regulations; there were no telegraphs nor railways to bring him effectively under the control of the Central Executive; the specialization of function which came to be so important a feature of British administration, had not begun; and local self-government through the agency of municipal councils and District Boards, which have limited the Collector's responsibility and weakened his authority, were then unknown. It is probable that he worked harder than the Collector to-day; it is certain that he lived much less comfortably.

In 1787, when the Collectorships were re-formed, the Governor-General-in-Council made the appointments chiefly on the basis of seniority, a principle which the Court of Directors fully approved. It had not always been so. Cleveland, a cousin of Shore, and Collector of Bhagalpur, died in 1784 at the age of twenty-nine, the "victim of his extraordinary and successful exertions in

[1] Bengal Rev. Cons., 18 May 1785.

reclaiming and civilizing the savage population of the District committed to his charge." [1]

The District Officer began his career in the Company's service as a writer, with a nominal salary. In the eighteenth century, a writership was regarded as being as valuable as a seat in Parliament, and younger sons of Peers did not hesitate to accept a position which, though humble, promised to lead to fame and fortune. Even in the eighteen-thirties, sons of noblemen and baronets were arriving in India as writers, so to a considerable extent the Company's service was recruited from the governing class and the wealthy professional classes at home. G. F. Grand, one of the best-known of the eighteenth-century civilians, did not disdain to return to India as a writer after having served as an officer in the Company's army for seven years.[2] Thomas Law (1756–1834), one of Cornwallis's District Officers, was the eighth son of the Bishop of Carlisle, a brother of the first Lord Ellenborough, and the uncle of Ellenborough, the Governor-General.[3] Peter Speke, who was promoted from a Collectorship to a seat in the Governor-General's Council in 1789, was the son of the well-known Captain Speke.[4] C. H. Purling, one of Cornwallis's Collectors, was the son of a Director.[5] Robert Bathurst, Collector of Tirhut, was the brother of the Bishop of Norwich.[6] The Hon. Robert Lindsay, who came out to India in 1772, was the second son of the Earl of Balcarres. The Hon. Charles Stuart (1743–1821), a member of Council, was the younger son of the seventh Lord Blantyre.[7] The following passage from Alexander's *East India Magazine* for the year 1834 illustrates the survival of eighteenth century methods of recruitment: " Of the number of writers appointed from home in the last five years, 3 were sons of noblemen, 8 were baronets' sons, 21 sons of clergymen, 46 sons of Company's civil servants, 74 sons of officers in the Company's army, 37 sons of officers in His Majesty's army or navy, 146 sons of merchants, bankers, professional men, and private gentlemen, and eight sons of Directors." [8]

The duty of transcribing official papers in the public offices was not at all calculated to prepare the young writer for the work which awaited him in the Districts; nor did it give him much opportunity of learning the country languages. On the contrary,

[1] *Shore Corr.*, i, 88. [2] Grand, *Narrative*, p. 208. [3] *Ibid.*, p. 306.
[4] *Bengal District Records* (*Rangpur*), ii, p. i. [5] *Ibid.*
[6] *Ross*, i, 447. [7] *Ibid.*, i, 227 n.
[8] Quoted from *Bengal, Past and Present*, xxx, 231.

as the Board on one occasion observed, the writer was always in great danger of contracting habits of idleness and dissipation.[1]

After a few years of this drudgery at the Presidency, the young civilian was posted to one of the District Headquarters as an assistant to the Collector. Lindsay, who went to Dacca in 1776, gives us the impression that the duties of an Assistant Collector were not too laborious. The younger servants, he said, had full leisure to amuse themselves; it was not the fashion to fatigue themselves with hard work; and most of the public business was transacted by the responsible senior servants.[2]

What were the qualifications demanded of a Collector? Shore once remarked that the work of revenue administration, the Collector's chief business, was in itself simple, and that the difficulties which Government had experienced were due to faults in the system, which experience would overcome. Common sense, a competent knowledge of the languages and customs and local peculiarities of the country, diligence, and rectitude of intention, were the only indispensable qualities which the post demanded, he said.[3] Both the Governor-General-in-Council and the Court of Directors emphasized the importance of acquiring an adequate knowledge of the country languages, of which Hindustani and Persian were the most necessary, especially Hindustani.[4] Cornwallis considered that the obtaining of a moderate proficiency in one or more of the Indian languages was perhaps the easiest part of a Collector's duty.[5]

Everywhere in the mufassal there was a great scarcity of houses suitable for European habitation, and a District Officer sometimes found himself unable either to buy or rent a bungalow.[6] In 1802, indeed, we hear of houses in the Districts being described as "decent and commodious," but those of the previous generation of civilians were, for the most part, not merely uncomfortable, but positively wretched and unhealthy. It was rightly

[1] Bengal Public Cons., 14 March 1792.
[2] *Lives of the Lindsays*, iii, 158, 161.
[3] Bengal Rev. Cons., 18 May 1785; 8 June 1787.
[4] Bengal Public Letter from Court, 18 Feb. 1789; Bengal Public Letter to Court, 17 Jan. 1787. "The Persian language I have neglected too much," wrote Lindsay in 1776. "The Moorish (Hindustani) I talk as well as most of my contemporaries, which in the common course of business is much more useful than the Persian, which now is not of near so much consequence as formerly, from the influence of the Country Powers being much curtailed and the business carried on in our own language" (*Lindsay*, iii, 162 n.).
[5] Bengal Secret and Separate Cons., 31 Jan. 1788.
[6] Bengal Rev. Cons., 21 March 1787.

considered that brick houses (which, in those days, in the mufassal, never had anything but a straw-thatched roof) [1] were essential for well-being,[2] yet some of the Collectors were compelled to live in mud huts which were in perpetual danger of being washed away during the rainy season. One such house, near Patna, was situated on the bank of a river ; the water was undermining the bedrooms, and the unfortunate occupant was daily expecting the complete collapse of the building.[3] Another Collector complained that the beams which held his mud house together were so decayed that he was in continual apprehension of its falling in, and he represented that his life was actually in danger.[4] The roof of another bungalow had been badly eaten away by white ants.[5] In another locality the Collector's house was in such a tottering condition that, although the wet monsoon was on the point of breaking, he had to live under canvas. Only two of the walls were standing.[6] The Collector of Dinajpur was forced to evacuate the remains of his house, and after vainly beseeching Government to provide him with a set of tents, he had to take refuge in the neighbouring Factory, " a very capacious ruin," one room in which was made barely habitable by propping up the beams.[7] The discomfort of living in these miserable houses was increased by the circumstance that, in the occasional total absence of Government offices, the official had to hold his Court and transact other business, too, on the verandah of his bungalow.[8] On the other hand, we do hear of one Collector who was " notorious for a neat house and a good table." Its unusual condition in 1788 was thus described by one of the friends of Champion, the owner, who had been absent from home for some time : " Prior to my leaving Calcutta, I promised Champion I would look at his house, and let him know its condition, but finding your Faujdar there (who says he has your orders to live in the house) I did not go above stairs, as he told me his women were there. Though he may have your permission to live in the house, I make not the least doubt you do not know that he keeps his whores there who cook their victuals in the upper rooms. I

[1] *Bengal, Past and Present*, xxix, 134.
[2] Bengal Board of Rev. Cons., 9 Oct. 1787.
[3] *Ibid.*, 4 Jan. 1790. [4] *Ibid.*, 1 May 1787.
[5] Bengal Rev. Cons., 21 Jan. 1789 ; Bengal B. of Rev. Cons., 29 July 1788.
[6] Bengal Board of Rev. Cons., 7 June 1786.
[7] *Ibid.*, 27 March 1787 ; Bengal Rev. Cons., 29 Jan. 1787.
[8] Bengal Rev. Cons., 9 July 1788.

desired him to remove his women into one of the rooms or to another place for a short time, till I could see the order the house was kept. He refused, nor can I say in a style becoming one of your servants. At present the house is more the picture of a pigsty than a house belonging to Champion." [1]

These houses were so flimsily constructed that they were occasionally blown down by a violent gale. It was a lesser calamity to have the roof and the verandah carried away, and the bedroom laid in ruins.[2] The Collector received a house allowance of Rs 150 a month, a sum which covered the rent both of his residence and of his public offices; if there were a residence and offices belonging to the Company, so that renting accommodation was unnecessary, he had to keep the buildings in repair with his allowance. He would not have objected to the expenditure of five or ten thousand rupees on a house belonging to the Company, had he been certain of occupying it for a number of years, but he was naturally reluctant to spend a considerable sum in this way when he knew that he might be transferred elsewhere at any moment. Sometimes, indeed, he was fortunate enough to be able to make a private arrangement with his successor, who would meet part of the cost of recent repairs. The Collector always desired to buy his house from Government, so that he could sell it to the next comer for what it was worth. In 1787, for example, Mr. Sherburne, the newly-appointed Collector of Birbhum, spent Rs 6,000 in repairing his house, the property of the Company, and vainly requested that it should be made over to him, since it was previously worthless and in ruins. During the next two years he spent an additional sum of Rs 4,000 on his public offices, so that when in 1788 he was dismissed from his post for an error of judgment, he would have lost not merely his Collectorship but also a house and offices on which he had spent nearly Rs 10,000, had Government not been willing to sell them to him for Rs 200, their value before any money had been spent in repairs.[3] The Collectors had, however, the option of refusing to keep the Company's buildings, residential and official, in repair: in such cases the property was to be disposed of by public auction.[4]

[1] *Bengal District Records (Dinajpur)*, i, 136.
[2] Bengal Rev. Cons., 7 Dec. 1787; 17 March 1790; Bengal Board of Rev. Cons., 28 June 1786.
[3] Bengal Rev. Cons., 21 Jan., 1 July 1789.
[4] *Ibid.*, 29 Jan. 1787; Bengal Board of Rev. Cons., 9 Feb. 1787.

Mosquito curtains, which alone made sleeping comfortable, had already come into use, and ants were kept out of bed by putting the bed-posts into pans of water.[1]

The Collector's public offices were in as deplorable a state as his private house. Sometimes, indeed, they were simply non-existent, and, bound by stringent economy regulations, he had to erect some at his own expense.[2] Official duties were consequently performed under most harassing and depressing conditions. In 1786 the Collector of Chittagong complained that his buildings were completely in ruins. "It has often happened during the present rainy season," he wrote, "that I have been obliged to keep back part of the business of the public for days together because I did not choose to hazard the lives of public officers by insisting upon their going into the buildings for the purpose of paying or receiving money, and I have been obliged to wait for a fair day till the business could be transacted, as the public officers were not able to go into the buildings without an evident certainty of exposing their lives to loss by the roof falling in upon them, of which I may say there is now daily apprehension, and it is more than probable that many lives may be lost from the ruinous condition in which these buildings are at present. As to the records of the Province, it is of a very material consequence to preserve them, to which a daily reference is almost necessary owing to the troublesome and litigious disposition of its inhabitants."[3] The Collector of Purnia stated in 1791 that since he had no public building for either his revenue or magisterial business, his work had to be done in apartments in his own house.[4]

This general lack of comfort and convenience would have been more bearable in a climate less trying than that of Bengal. The idea is still widely held in western countries that a young man going out to a tropical country is gravely risking his health. In the eighteenth century that opinion was by no means confined to the uneducated, and in the *Edinburgh Review* (April 1810) the absurd statement was made that a very large proportion, indeed almost nine out of ten, of the Company's servants died from the effects of the Bengal climate before they had been many years in the country.[5] If the author of that article had taken the trouble

[1] *Bengal, Past and Present*, xxix. 137.
[2] Bengal Rev. Cons., 29 Jan., 21 March 1787; 20 May 1789.
[3] *Ibid.*, 29 Jan. 1787. [4] Bengal Rev. Jud. Cons., 3 Feb. 1792.
[5] *Edin. Review*, April 1810, p. 138.

to examine the facts, he would have realized the absurdity of the statement. Most of the Collectors whom Cornwallis appointed in 1787, when the Districts were reorganized, had spent fifteen or twenty years in India. Shore declared in 1789 that of a tontine of more than a hundred subscribers of various ages and constitutions, formed upon a principle of survivorship, not one member died in the course of three years. He doubted whether any other climate in the world could exhibit a stronger proof of a salubrious air. "The character of unhealthiness which is attributed to Bengal," he said, "seems rather to have arisen from our own inexperience and improper mode of living, than to be well-founded. . . . Drinking hard was some years ago fashionable; but at present there are few instances of it. . . . One half of the disorders in Europe are unknown in India; and putrid fevers, which are supposed to be frequent here, scarcely occur once in two years: indeed, more die in London of putrid complaints in one year than in twenty in Calcutta." [1] W. A. Brooke, who went to Bengal as a writer in 1769, and who was one of Cornwallis's Collectors, spent not less than sixty-four years in the Company's service; he died at Benares in 1833 without once re-visiting England.[2] No less than five civilians who were in Bengal during Cornwallis's Governor-Generalship, served the Company over fifty years, and were still in the service in 1830.[3] Speke, one of the members of the Supreme Council, died in Calcutta in 1811, forty-two years after his appointment as a writer.[4] "Few constitutions can stand this climate many years," declared Cornwallis in November 1786, but he had then had less than two months' experience of Calcutta, and no doubt he was still feeling the heat, the cold season not having really set in at that time.[5] In spite of his corpulence he enjoyed good health throughout his seven years in India. "I have not had a day's illness since I came to this country," he wrote to Dundas on 12 August 1787 [6]; and if he had written about his health on the eve of his departure from India more than six years later, he would not have needed seriously to modify that statement. Although his Collectors had spent many years in the service, only about four died at their posts whilst he was in office. If his civilians did not find the climate of Bengal unbearable, they

[1] *Shore Corr.*, i, 198. [2] *Bengal, Past and Present*, xxxiv, 143.
[3] *The East India Register and Directory for* 1830.
[4] *Bengal, Past and Present*, xxvi, 112. [5] *Ross*, i, 225.
[6] Melville Papers.

did, on the other hand, find it trying, and if there was a good deal of sickness, that was chiefly due, as Shore remarked, to intemperate habits, and also to the absence of all the modern conveniences which now make life extremely tolerable in the tropics, and to a backward medical science. "Experience also proves," said Shore, "that our constitutions are ill adapted to struggle with the climate, under the pressure of close and constant application to business. Few men, who are industrious and in office, devote less than six hours a day to business of a sedentary nature: and the body and mind, particularly when the last is active, are in time worn out." [1] Considering, again, the fact that the Collectors were middle-aged men, the number of retirements (four) from ill-health during the years 1787–93 is not excessive.

Some of the Collectors were incapacitated by long-drawn-out illnesses. We hear of Speke, the Collector of Rajshahi, and afterwards a member of Council, struggling with a severe illness for eighteen months, and being compelled to resign his post.[2] His successor, Henckell, who was transferred from the very unhealthy Sundarbans, was also ill for a long period. "The whole of my time these last eighteen months," he wrote, "has been employed in the business of my office and the discharge of my duty in the different departments of Collector, Judge, and Magistrate, and even during a very long and severe indisposition at the risk of my health and every earthly enjoyment, I regularly attended the cutchery in the pleasing expectation of recommending myself to his Lordship and the Council by my exertions and assiduity and the successful execution of the services expected from me, upon my accession to Rajshahi . . . I have been tormented by a return of my Sundarban fever these last six weeks, and in my present enervated state, no small exertions are required to enable me to get through the fatigues of this troublesome and unpleasant appointment." [3] Mr. Wroughton, the Collector of Mymensingh, who was recalled to the Presidency and dismissed because of an alleged deficiency in his treasury and of repeated neglect of orders, had been seriously ill for nearly twelve months with a liver complaint which obstinately refused to yield to the calomel treatment prescribed by his physician. "This medicine," he wrote, "I commenced the 26 December 1789 and continued it for seven weeks, my body reduced and emaciated as

[1] *Shore Corr.*, i, 198. [2] Bengal Rev. Cons., 3 Dec. 1788, 24 July 1789.
[3] *Ibid.*, 2 Sept. 1791.

well by the remedies as the disorders which obliged me to have recourse to them, and my mind equally depressed by a tedious confinement, and the displeasure of your Board, which I apparently deserved, contributed to bring on that severe relapse of my ague which nearly proved fatal." [1] The Collector of Sylhet, commenting on the unhealthiness of the place, which, he said, proved very fatal to both Europeans and up-country sepoys unaccustomed to the climate, stated that out of a small detachment of troops there, seventy sepoys were in hospital with such complaints as fever, dysentery, malaria, dropsy, and syphilis, and that three European artillerymen were suffering from intermittent fever and "obstructions in the bowels." [2]

In those days there were no hill stations where leave might be spent and health restored; nor were the Company's servants generally permitted to go home on furlough. The standing orders of Government required that all officials employed in the Revenue and Commercial Departments should resign their posts previous to their application for leave to return to Europe, and that they should at the same time submit a certificate from the Department under which they had acted, that they had settled accounts.[3] We find instances of servants being given leave of absence in Europe for a period of three years, but in all cases they had to resign the service before embarking, and it was for the Court of Directors to decide, on the recommendation of the Governor-General-in-Council, whether such servants should be permitted to return to Bengal.[4] Occasionally a civilian was given permission to make a voyage to the Cape of Good Hope for the recovery of his health.[5] We hear of one Collector's health being greatly improved by a stay "in the upper part of the country" (that is, in Bihar), whilst another Magistrate on one occasion took a river trip for his health.[6] Sir William and Lady Jones were always benefited by "the dry soil and pure air of Krishnagar," [7] and the sea air of Chittagong.[8] People who have lived in Rangoon do not usually consider it to be a health resort, though it has a more equable climate than Calcutta or Madras; but in 1789

[1] *Ibid.*, 30 Sept. 1789; 4 June 1790; Bengal Board of Rev. Cons., 15 March 1790.

[2] Bengal Rev. Cons., 27 Oct. 1790. [3] Bengal Public Cons., 20 Jan. 1790.

[4] Bengal Public Letter to Court, 13 Nov. 1786; 17 Jan. 1787; Bengal Public Cons., 20 Jan. 1790.

[5] *Ibid.*, 28 Dec. 1786; 17 Jan. 1787.

[6] Bengal Rev. Cons., 10 Sept. 1788; Bengal Rev. Jud. Cons., 19 Oct. 1792.

[7] *Life of Sir Wm. Jones*, ii, 68. [8] *Ibid.*, ii, 99.

one of the Company's servants went to Rangoon to recover his health. At the end of May he was in Pondichéry, where he "was attacked with a severe fever and relapse of my liver complaint." The French surgeon who attended him recommended a sea voyage and a vacation in Rangoon, the mineral baths there, he said, being an infallible cure for the liver disorder and the intermitting fever with which his patient had been so frequently attacked of late. As it happened, the experience was a thoroughly unfortunate one. On the way across the Bay the ship touched at the Car Nicobar Island, an unhealthy place where Mr. Caldwell caught an ague, and for the rest of the voyage he was extremely unwell. Off the Burma coast the ship ran aground about six leagues from land, and there was not a boat on board. The crew, however, constructed a raft, and after much difficulty and suffering the sick man got ashore, more dead than alive, without a rupee in his pocket or a shirt on his back.[1]

In general, then, leave meant little more than absence from duty, and was often spent at the Presidency, where the indulgence in a long round of social pleasures and high living was little calculated to restore shattered nerves and diseased bodies.

We have seen that Cornwallis put the financial position of the Company's senior servants on a satisfactory basis. The Collector, after perhaps ten or twelve years' service in subordinate posts, received a monthly salary of Rs 1,500, plus Rs 150 house allowance, and a commission on the revenue he collected, the latter varying from a maximum of about Rs 27,000 to a minimum of Rs 6,000 per annum.[2] His head assistant was paid Rs 500 a month, including house allowance; his second assistant, also a covenanted servant, Rs 400; his third, Rs 300 a month.[3]

The Collector received no travelling allowance. It was part of his duty to make an annual circuit of his District, that he might

[1] Bengal Public Cons., 25 Sept. 1789.

[2] The commission was thus fixed:

Revenue Collected.	*Amount of Commission.*
10 lakhs and upwards—1 per cent. on first 10 lakhs and ½ per cent. on the remainder.	
Between 10 and 9 lakhs	Rs. 10,000
„ 9 „ 8 „	9,000
„ 8 „ 7 „	8,000
„ 7 „ 6 „	7,000
Less than 6 lakhs	6,000

(Bengal Rev. Cons., 18 July 1787.)

[3] *Ibid.*, 18 April 1787. The assistants also received travelling and munshi allowances. Whenever they were stationed separately from the Collector, they received a house and office allowance of Rs 100 per month (Bengal Board of Rev. Cons., 3 April 1787).

supervise the work of his subordinates, prevent the zamindars from oppressing the cultivators, inquire into complaints, and ascertain the state of the crops.[1] If, perchance, he complained of the heavy personal expense of prolonged touring, he was informed that in fixing his pay and allowance Government had taken into consideration the fact that he would incur travelling expenses, and that he must visit any part of his District, expense and inconvenience notwithstanding, where his presence was required.[2] If, however, he was summoned officially to the Presidency, he was given a travelling allowance by land or water of Rs 2/2 per mile.[3] When the Chittagong Collector went to Calcutta in 1785 to take the oath of office, his expenses amounted to Rs 1,800. The new scale of pay and allowances was such that, without inflicting hardship on its servants, Government could prohibit them from carrying on private trade. No Collector might leave his post without the permission of Government, and this the Collector of Nadia had to obtain in August 1788 when he was subpœnaed to appear before the Supreme Court of Judicature.[4]

The collection of the revenue was the heaviest and most responsible of the District Officer's many duties. The total land revenue amounted to about three crores and was collected at an expense of about seventy lakhs of rupees. In one backward frontier District (Sylhet), where there was little silver or copper in circulation, the people paid their taxes, amounting to about half a lakh, in cowries,[5] which, owing to their weight and bulk, had to be kept in large brick treasury godowns costing nearly Rs 8,000, instead of in a single chest.[6] In one distant frontier District (Rangpur) we hear of two zamindars who paid their taxes in

[1] Bengal Rev. Cons., 25 March 1791.

[2] *Ibid.*, 8 Nov. 1787; Bengal Board of Rev. Cons., 27 Jan. 1789. When the Collector of Jessore went on tour in March 1790, he had over 130 coolies and servants with him, and his expenses exceeded Rs 600. (Bengal B. of Rev. Cons., 30 April 1790.)

[3] The rate for an assistant Collector and for surgeons was Rs 1/1 per mile (Bengal Public Cons., 18 Aug. 1788). Judges received the higher travelling allowance (Bengal Public Cons., 18 Aug. 1788). In 1786 the Board of Revenue refused to reimburse the Collector of Birbhum his expenses incurred in coming to Calcutta, because he left his station without authority. (Bengal Board of Revenue, 26 Dec. 1786.)

[4] Bengal Rev. Cons., 10 Sept. 1788.

[5] 5,120 cowries were equivalent to one rupee (*Lindsay*, iii, 170).

[6] Bengal Rev. Cons., 29 Jan. 1787; Bengal B. of Rev. Cons., 28 Dec. 1786. The Collector of Sylhet was allowed to insert a monthly charge of Rs 100 for treasury godowns in his accounts, in view of the peculiar circumstances.

elephants, of which from seventy to ninety were caught each year on the borders of Assam and Bhutan, but owing to the negligence of the mahouts who took them to Rangpur, the District headquarters (a seven days' journey), it was rare for more than seven or eight to arrive. One zamindar was supposed to send 68 elephants, the equivalent of Rs 6,000; the other, 40 elephants. The animals were sold by auction in Rangpur, realizing between 50 and 106 rupees each.[1] The high rate of mortality made this arrangement very disadvantageous to Government, but when an attempt was made to substitute a money tribute serious disturbances followed, involving loss of life, and for some years no change could be effected.[2] With these exceptions, the revenue was paid in silver, and the Collector was not allowed to accept gold mohurs.[3]

To a limited extent the Collector was allowed to exercise his discretion in the choice of persons with whom a settlement of the land revenue was to be made. Both the India Act of 1784 and the Court of Directors had ordered the settlement to be made in every practicable instance with the zamindars, provided that they were not under age, were not disqualified by lunacy or notorious profligacy of character, and were not women. In such cases of disqualification the settlement was to be made, whenever possible, with a reputable relative or a trustworthy servant, rather than with a temporary farmer. The previous year's assessment was, in general, to be accepted, although in some instances an increased amount might be demanded, particularly in cases where remissions for causes of a temporary nature had been granted. The jama was fixed each year by the Collector, and all the landholders had to appear in person or send their agents to the Collector's cutchery to sign their agreements. The zamindar chose his own Naib or chief agent, but the Collector could prevail upon him to dismiss dishonest, untrustworthy and incompetent agents. The Collector was to use his local knowledge

[1] Lindsay tells us that in a period of twelve years he caught from 150 to 200 elephants a year in his District. "The average price at a distant station," he wrote, "was from £40 to £50; when sold singly, their price varies as much as from a Highland pony to the first Newmarket racer. The natives have beauties and blemishes in their opinion of them, of which we know but little. They have their lucky and unlucky marks. An elephant born with the left tooth only is reckoned sacred—with black spots in the mouth unlucky and not saleable; the mukna, or elephant born without teeth, is thought the best." (*Lindsay*, iii, 194.)

[2] Bengal Rev. Cons., 27 June 1787.

[3] *Ibid.*, 30 Sept. 1789.

and experience to secure an equitable scheme of rents for each ryot, but the only effective way to prevent the landholder's revenue agents from exacting undue amounts from the ryots was to compel the landholder to give pattahs to the cultivators, specifying the sum which each had to pay. We hear of many instances of oppressive exactions by the zamindars' agents. Mr. Udny, who was in charge of the Company's Factory at Malda, frequently had cause to complain to the Collector of Dinajpur of the arbitrary methods of the revenue officials, who plundered, beat and confined the weavers without any regard for the Regulations of Government. "My business is completely disordered in consequence of these proceedings," he wrote on one occasion. "At the Factory of Saumgunge all is uproar. Weavers are carried away by peons, confined, clothes torn off their backs; they are beaten and forced to give the excessive rent demanded of them, notwithstanding they have regularly paid, or are ready to pay, the just account of their pattahs. They have deserted their houses and their looms, and are assembled for redress." [1]

The zamindars had their own cutchery, under the Collector's superintending control, and the Collector had a subordinate official stationed in each cutchery to take an account of the daily receipts of revenue, which were paid in at monthly intervals to the Collector's cutchery at his headquarters. When once the money had been paid into his treasury, special precautions had to be taken to guard the office and to convey the silver to the Presidency. In theory the zamindars were responsible for the safety of the Collector's treasury and of the money whilst in transit, but they evaded their responsibilities so frequently, and the country was so overrun with dacoits, that the Collector was generally obliged to provide guards himself. He frequently requested Government to send detachments of sepoys from the nearest military station, and complained of the negligence of the zamindars, but his applications were for the most part rejected, Government having resolved that no detachments of less than an officer's command should be made from the military stations, and that no money allowance for a guard should be given.[2] The Collector might write and say that if he sent his money to Calcutta under the charge of zamindari paiks it would surely be plundered

[1] *Bengal District Record.* (*Dinajpur*), i, 94.
[2] Bengal Board of Rev. Cons., 5 Sept. 1786.

on the way, but the only reply would be that the arrangement could be made satisfactory if proper precautions were taken.[1] If the zamindars failed to provide the required number of guards according to their contract, they were in theory liable to be deprived of those lands which had been specially reserved for the maintenance of the zamindari paiks. Charges for treasury guards were therefore disallowed.[2]

The Collector was expressly forbidden to make remittances of revenue to the Presidency in the specie in which he received it, and was instructed to negotiate exchange on the spot.[3] For there were many kinds of silver coin current in Bengal, some having been struck by the Mughals, others by the Company. Mints existed in Calcutta, Murshidabad, Dacca and Patna, but the coins were always of poor quality, since coining was done, not, as in England, by machines, but by the hand and hammer. Consequently the coins varied in weight, and their individual value had to be ascertained by a shroff, the stamp certifying merely the standard fineness. The commonest coin in circulation was the sicca rupee, the standard weight of which was 192 grains troy, and contained 176·13 grs. of pure silver. It was frequently objected that this standard of purity was too high, entailing much loss by wear, but Shore proved that the objection was not well-founded, and that the loss was really only 1 per cent. in thirty years. Nevertheless the coins were very imperfectly made. They were not properly rounded; the size, thickness, clearness of the inscription, were not uniform; the edges were too sharp and caused excessive wearing, whilst the excessive thickness tempted the unscrupulous to extract the silver and fill up with base metal. There were customary rates of batta on each kind of rupee, and the amount varied according to the season of the year.[4] Sometimes the Collector was allowed an option for the payment of revenue in either specie, sicca or Arcot rupees.[5]

[1] Bengal Rev. Cons., 21 Feb. 1787.

[2] *Ibid.*, 29 Jan. 1787; 29 Oct. 1788. An exception was made in the case of the Collector of Shahabad, a District "notorious for its dacoits." He was allowed to continue "for the present" his charge of Rs 150 a month for Treasury guards (Bengal Rev. Cons., 8 Nov. 1787). Also, in December 1788, the Collector of Nadia was allowed an escort of sepoys, when he remitted to the Presidency the balance in his treasury (*Ibid.*, 17 Dec. 1788).

[3] Bengal Board of Rev. Cons., 31 July 1787.

[4] Bengal Rev. Cons., 28 Oct. 1789. In 1789 the Board decided to re-coin the sicca rupee in the European manner, and to improve the design. (*Ibid.*)

[5] Bengal Board of Rev. Cons., 12 Oct. 1787.

Government's refusal to allow the Collector to spend money in guarding and remitting revenue [1] placed him in a serious predicament, for the paiks, even when furnished by the zamindars, were utterly untrustworthy. Sherburne, the Collector of the Birbhum District, got into trouble over this matter in 1788, and the mistake cost him his post. In December 1787 Government deprived him of his sepoy guards, whereupon he reported that his treasury could not be considered safe, especially since a gang of three hundred dacoits, who had been committing murders and robberies, was in the neighbourhood. But his request for a proper escort was refused. On 3 October 1788 he sent off to Calcutta Rs 55,000 in 55 bags under the escort of six sepoys, five barkandazes (armed policemen) and ten peons. The escort was attacked on the 10th by a party of dacoits who killed seven men and carried off thirty bags. The revenue had been paid in advance by the zamindar of Birbhum, and the Collector made the remittance in an irregular way—not direct to the Government sub-Treasurer, but indirect through a House of Agency (Messrs. Grahams and Mowbray) in Calcutta, Sherburne's attornies. No letter of advice and no invoice were sent to the sub-Treasurer, who on 21 October refused to accept the remaining Rs 25,000 from the attornies without orders from Government to do so. The Governor-General-in-Council resolved on 29 October that the Collector had been guilty of a breach of duty in receiving money without bringing it to account (he had not done so because it was paid in advance) and without giving notice of its being sent, and that he was guilty of disobedience to Regulations in remitting it to a house of agency without notice. The unfortunate man was not only dismissed but made personally responsible for the whole sum received from the zamindar, not, however, on the ground that he had omitted to take proper precautions for its safety whilst in transit, but on the technical ground that it had been remitted in an irregular manner, so that it could not be considered as public money. Accepting that line of argument Sherburne replied suggesting that since he had not been remitting public money,

[1] It cost Rs 168/3 to convey Rs 91,000 of treasure from Jessore to Calcutta in 1789, the items being: 91 coolies, 125/2; gunny and coarse cloth for bags, 5/10; sealing wax. 1/9; 25 Barkandazes, 31/4; powder and shot, 3/10; oil for the chokey at night, Re 1. (Bengal Rev. Cons., 21 Oct. 1789.)

The Collector of Jessore's charges for transporting treasure in one year were Rs 742/15/10, the money having to be carried by coolies under an armed escort. (Bengal Board of Rev. Cons., 23 Nov., 7 Dec. 1787.)

he had not disobeyed the Regulations regarding methods of remittance.

A few months later a portion of the stolen treasure was recovered from some dacoits, whose confession of the robbery implicated the police employed by the zamindar of Burdwan as indirect accomplices who had received a share of the plunder.[1] Sherburne asked the Governor-General to make the zamindar responsible for the amount, in accordance with the immemorial custom of the country. "I cannot admit your Lordship," he wrote, "to have ever entertained an idea that I should suffer more than a temporary loss, for it would be inconsistent with such sentiments and principles to suppose it possible to have been your Lordship's intention to annex a double punishment, unprecedently severe, to one and the same offence. Your Lordship, I am very sure, neither can mean or could have meant that this offence from which Government neither has or can sustain a loss, that an error, my Lord, venial in its nature and harmless in effect, should be attended with deprivation of office and a fine ruinous in its consequences, and in its magnitude implying the guilt of the most atrocious crime." Finally it was decided that the zamindar should be made responsible for half the stolen money,[2] and Sherburne made good the remainder. The Court of Directors, in a Despatch dated 4 August 1791, approved the imposition of the fine, but considered that he would be too harshly dealt with if he were permanently deprived of his post. To the extreme annoyance of Cornwallis, who described Sherburne as a "rascal . . . who has no revenue abilities or merit whatever," [3] the Court therefore instructed the Board to restore him to his former situation, or alternatively, to give him the charge of another District, on condition that he apologized for what was described as the "indecent and disrespectful language" which he had used in a written memorial to the Directors on the subject of his dismissal. Unfortunately, however, before this Despatch reached Calcutta, Sherburne committed another serious breach of Regulations by embarking for England on a foreign ship without having obtained the Board's final permission to depart. Upon hearing of this, the Directors revoked their order of re-instatement and dismissed him from the service "as having forfeited every claim

[1] Bengal Rev. Cons., 15, 29 Oct. 1788; 12, 21 Nov. 1788; 25 March 1789.
[2] *Ibid.*, 6 May, 19 Aug. 1789.
[3] Melville Papers, Cornwallis to Dundas, 4 March 1792.

to our future favour and indulgence." They added, however, "we permit him to return to your Presidency on the condition that he make a satisfactory apology for the intemperance of his conduct." [1]

Until 1793 the District Officer was not merely in charge of revenue administration, but also acted as Civil Judge and Magistrate. His judicial duties, however, were always considered less important than his revenue work, and when he was pressed with revenue matters he handed over some of his Court work to his head assistant.[2]

The District Civil Court was supposed to be held "in a large and convenient room," but usually the place had none of that dignified and impressive appearance properly associated with a Court of Justice. Sometimes it consisted of a mere godown, and even the verandah of the Collector's house.[3] In other places, where separate buildings were allocated to judicial business, these were merely bamboo and straw structures.[4] In one District, indeed, a single room had to suffice for the transaction of revenue, judicial, and police business.[5]

The nature of the business prevented the Judge from observing the elaborate and dignified forms and ceremonies usually connected with the higher Courts. He took his seat on a platform, whilst the pleaders sat on stools or mats when disengaged. The general public was admitted when there was room to spare, and peons and barkandazes wearing silver or brass plates, and belts, maintained silence and kept the crowd at a proper distance. There were sometimes as many as fifty petty officials attached to the Court and the gaol for debtors, at a monthly expense of about Rs 600, but in general the total annual expense of the District Civil Court did not exceed Rs 7,000.[6] The Collector's Adalat charges were carefully scrutinized by the Board. He was allowed to spend Rs 30 a month on paper, ink, oil and mats, and if he used too many quill pens or wax candles, too much twine for repairing the cutchery purdas, or too much white cloth for making covers for the Court records, his expenditure was liable to be disallowed.[7] In 1787 the Collector of Murshidabad was asked to explain his charges of Rs 6/14 for medicines and

[1] Bengal Public Letter from Court, 4 Aug. 1791; 25 Feb. 1793.
[2] Bengal Rev. Cons., 11 Feb. 1789.
[3] *Ibid.*, 29 Jan. 1787, 27 June 1787, 9 July 1788, 23 Dec. 1789.
[4] Bengal Rev. Cons, 20 May 1789.
[5] Bengal Rev. Jud. Cons., 3 Feb. 1792.
[6] Bengal Rev. Cons., 18 April 1787.
[7] *Ibid.*, 29 Jan. 1787.

Rs 8/1 for subsistence to prisoners, these charges not being permitted by the Regulations. He replied that motives of humanity prompted him to give medicine to sick prisoners. The Regulations laid down that the plaintiff must feed his imprisoned debtor, who would be released if the plaintiff neglected for two months to pay the allowance. The Collector felt that he could not leave such prisoners to starve for eight weeks or to depend on being relieved by charity. "From motives of humanity" the Board thereupon acquiesced in the charge being made.[1]

The Long Vacation lasted from two to three months, during the cold season.[2]

In addition to these arduous and unwelcome duties, the District Officer, in his capacity of Magistrate, had to see to the arrest and committal for trial of all persons accused of serious offences, and to hear and determine himself a vast number of petty cases. Further, he had to inspect the gaols at least once a month, and to report cases of ill treatment to the Governor-General-in-Council.

The District Officer was a semi-absolute monarch, ruling over a territory as extensive in area and population as some of the smaller countries of Europe. The District of Mymensingh extended north and south nearly two hundred miles.[3] "There is not an individual in his District," wrote Cornwallis, "whose person and property is not some time or other within the reach of his authority. Such power, vested in an individual, and at a great distance from the seat of supreme control, excites terror in the minds of the people, instead of inspiring them with confidence in its protection; and as they can form no judgment of our Government, but as it is shown to them in our representative, the Collector, there is little encouragement for them when oppressed to rely upon our justice for relief. By the operation of these causes we are to account for whole Provinces silently submitting for years to oppression, and for the mal-administration of Collectors having never reached the ear of Government, until despair getting the better of the terrors of power, the people flock to the Presidency to impeach their oppressor."[4] "They have it in their power to make their fortune in a few months," he wrote on another occasion.[5] Had not Shore declared that he

[1] Bengal Rev. Cons., 14 Feb. 1787.
[2] *Ibid.*, 16 March 1787.
[3] *Ibid.*, 16 Sept. 1789.
[4] *Ibid.*, 11 Feb. 1793.
[5] *Ross*, i, 278.

could have made £50,000 a year and £100,000 by a single mission to Dacca to settle the revenues with the zamindars, if he had not been burdened with a conscience ? [1] "Isn't he very rich ?" asked Rebecca, referring to Mr. Joseph Sedley, the Collector of *Boggley Wollah*, who held "an honourable and lucrative post, as everybody knows." "They say all Indian Nabobs are enormously rich." [2]

The lives and fortunes of hundreds of thousands of people came under the control of the District Officer. On one occasion the Collector of Dinajpur issued orders to the military who were endeavouring to round up a notorious gang of dacoits, that every tenth man taken with weapons in his possession was to be hanged on the spot without ceremony, or if a lesser number were captured, the officer in charge was to use his discretion, as to the number on whom summary justice was to be executed. In any case, the leader of the gang was to be hanged at once.[3] On another occasion the Tirhut Magistrate executed out of hand at midnight a dacoit leader who had just been captured, the justification being that the station was defenceless, whilst hundreds of the man's followers were in the village contemplating a rescue. "This is one of those occasions," wrote the Magistrate, "which dispenses with ordinary forms and leaves no leisure for the tardiness of judicial process." [4] In the first case Cornwallis notified his disapproval of the Collector's orders to the military, and directed the officer commanding the detachment should destroy, disperse, and take prisoners the dacoits in arms against him, "but those who fall into his power as prisoners can suffer the punishment of death upon due conviction, only after a regular trial." [5] In the second case the Magistrate was informed that although the dangerous situation at Tirhut might have made the immediate execution of the dacoit leader "expedient in some degree, the Board desire that upon any future occasion the Magistrate will not proceed to this extremity without either a previous trial or a reference to the Governor-General-in-Council."[6] A few days later the Collector of this frontier District requested the protection of an armed guard, since from three to four hundred dacoits were threatening to assault his house, which was defended by only ten sepoys. "I am more exposed," he said, "from the

[1] *Shore Corr.*, i, 75, 114.
[2] *Vanity Fair*, Chapter II.
[3] Bengal Rev. Cons., 18 Jan. 1788.
[4] *Ibid.*, 3 June 1789.
[5] *Ibid.*, 18 Jan. 1788.
[6] *Ibid.*, 3 June 1789.

nature of my situation, to rebellious zamindars and plunderers of every description, than almost every other Collector." [1]

The collection of the revenue; the administration of civil justice; the supervision of the Police and the gaols: these do not exhaust the category of duties imposed on the District Officer. These duties were of a highly miscellaneous character. Some jaundiced individual writing to the editor of the *Calcutta Gazette*, stupidly suggested that the Collectors had "an itch to write," and that they spent much time in writing which might have been more profitably employed in doing something useful.[2] The harassed Collector, who was compelled by the Regulations to fill reams of paper, would probably have heartily agreed with the second statement. He had to submit endless reports to Government—on such varied matters as the state of the crops, the quantity of grain likely to be available for export, the prices of different kinds of grain, the number of soldiers confined to hospital, and their complaints; the number of people killed by tigers and the number eaten by alligators [3]; the state of the

[1] Bengal Rev. Cons., 24 June 1789. [2] *Calcutta Gazette*, 3 June 1790.

[3] In one year 309 people were killed by tigers and three by alligators in one small district alone—more than twice the number that died a natural death. Sometimes tigers carried off the mails as well as the postman. On 4 January 1791 the postman carrying the mail destined for Calcutta was killed in the Ramghar District, and the mail-bag too was carried off into the jungle. Evidently, however, the tiger found the postman more appetising than the letters, for the mail-bag was afterwards recovered, although many of the letters were so much cut and destroyed as to be illegible (Bengal Public Cons., 16 March 1791; Bengal Rev. Cons., 18 Nov. 1789). The Collector of Ramghar was authorized to pay a body of 25 men a monthly sum of three rupees to ensure the safety of the mail and of travellers; and the Postmaster-General was given permission to station a staff of 21 men at three rupees per month per head along the western mail route, to kill tigers and accompany the postman during the night (Bengal Public Letter to Court, 10 Aug. 1791). All the Collectors were ordered to call upon the zamindars to clear the jungle on both sides of the road so as to afford some security to the dawk bearers (Bengal Rev. Cons., 7 April 1790). Lindsay, the Collector of Sylhet, had an alarming experience one night whilst travelling by river through the Sundarbans on his way to Calcutta. Although the boat was doing seven knots on an ebb tide, a tiger leapt on board and carried away the bowman, leaving one of its claws behind, in its efforts to get on board. "Tigers," said Lindsay, "are in no part of the world more numerous than at Sylhet, but as their natural food of sheep, goats and deer is abundant, I hardly knew an instance of their attacking a human creature, nor do the inhabitants hold them in terror; but in the country I have described, their character is totally changed in consequence of starvation. The deer in these regions are innumerable, but, the whole country being thrown some inches under water every spring-tide, though it operates in favour of the forest trees, the underwood is completely destroyed, so that the tiger, finding no shelter to enable him to pounce on his prey, is famished in the midst of plenty; he is therefore compelled to take to the water for food, and thus becomes in a manner amphibious" (*Lindsay*, iii, 204).

roads,[1] bunds and bridges; the number of European inhabitants, their families and occupations; the number of distilleries and liquor shops in the District. Highly elaborate balance sheets of revenue and expenditure had to be periodically drawn up, and the cost of every wax candle, every bottle of medicine, every bottle of ink, every quill pen, every chuprassy's silver plate and belt, every pice spent on feeding a prisoner or on fetters for securing him, and on the tom-tom for scaring away tigers from the postmen during the night, had to be recorded with scrupulous accuracy. Complaints of the behaviour of the troops at the different army stations had to be reported to the Board of Revenue. The District Officer had to devise means of preventing the improper sale of intoxicants to the soldiers and to close down the spirit shops in the vicinity of cantonments. He was responsible for the defence of the frontier (a duty of exceptional and increasing importance in the case of the Chittagong Collector),[2] and the officers commanding the military detachments carried out his instructions. He had to see to the erection of new buildings, to the repair of old ones, and to draw up estimates of expenditure on these heads. He had to send out military and police expeditions against gangs of dacoits, to relieve the destitute ruined by floods, famine, pestilence, and other "acts of God"; to organize a ferry service whenever a bridge across a river collapsed[3]; and to see that the bunds, roads, and bridges were kept in repair. One Collector was once given the rather overwhelming task of obtaining 6,000 coolies for a contractor who was going to change the course of a river.[4] The District Officer had to see to the widespread publication of Government proclamations; to pay out rewards for killing tigers[5]; to undertake extensive tours, to facilitate the despatch of mails, to

[1] It is interesting to note that in 1785 the Collector of Ramgarh reported that the *new* road through his District was undergoing annual repairs (Bengal Public Cons., 31 Jan. 1785).

[2] The Collector of Sylhet also had much trouble from "numerous small tribes of independent freebooters" (Bengal Rev. Cons., 18 June 1787; 27 Oct. 1790).

[3] Bengal Rev. Cons., 9 Aug. 1787. In 1787 the Collector of Ramgarh asked for permission to sell rice at a nominal price to the starving peasantry in his District, who had been reduced to a pitiful state of distress by repeated floods. Thousands of them were flocking to Ramghar; many had been without food for eight or ten days, and some were dying in the streets before help could be given (*Ibid.*, 16 Oct. 1787).

[4] *Bengal District Records* (*Dinajpur*), i, 277.

[5] Ten rupees for each skin was the usual amount. On one occasion the Collector of Jessore disbursed Rs 330 in this way (Bengal Board of Rev. Cons., 20 July 1789); on another occasion, Rs 680 (*Ibid.*, 23 Nov. 1787).

prevent the smuggling of arms and their use by unauthorized persons, to send European prisoners under escort to Calcutta to take their trial before the Supreme Court of Judicature, and in time of war to supervise the movements of all European foreigners. He had to purchase blankets and medical stores for the use of prisoners in gaol, and to provide food for imprisoned debtors whom their creditors had left to starve. Prisoners committed for trial were also allowed subsistence at Government's expense, and the Collector had to write out elaborate reports specifying the name of each prisoner, the date of his arrest, the number of days for which the one anna daily allowance had been paid, and the total cost. Every morning he had to listen to the petitions of innumerable suitors and to make a written record of his decisions: a business which might take three hours.[1] When a Hindu woman wanted to immolate herself on the funeral pyre of her husband, it was to the Collector that her friends and relatives applied for permission.[2] He solemnized European marriages and officiated at funerals, since hardly any District headquarters possessed a clergyman.[3]

The District Officer was shorn of some of his great power in 1793, the reforms of that year depriving him of the offices of Civil Judge and Magistrate, and subjecting him to an increasing

[1] Bengal Rev. Cons., 2 Sept. 1791; 30 Dec. 1791.

[2] The Shahabad Collector was approached in this way on 28 January 1789. "Being impressed with a belief that this savage custom has been prohibited in and about Calcutta," he wrote to Government, "and considering the same reasons for its discontinuance would probably be held valid throughout the whole extent of the Company's authority, I positively refused my consent. . . . I beg therefore . . . to be informed whether my conduct in this instance meets your approbation." The Government's early attitude towards this problem is worthy of notice. The Supreme Council agreed "that the Collector of Shahabad be acquainted that the Board approve of his having refused to give his consent to the application made to him on the part of a Hindu woman for permission to burn herself with her deceased husband; that though they are desirous he should exert all his private influence to dissuade the natives from a practice as repugnant to humanity and the true principles of religion, they do not deem it advisable to authorise him to prevent the observance of it by coercive measures or by any exertion of his official powers, as the public prohibition of a ceremony authorised by the tenets of the religion of the Hindus, and from the observance of which they have never yet been restricted by the ruling power, would in all probability tend rather to increase than diminish their veneration for it, and consequently have the means of rendering it more prevalent than it is at present; that it is hoped the natives themselves will in course of time discern the fallacy of the principles which have given rise to this practice, and that it will of itself gradually fall into disuse" (Bengal Rev. Cons., 4 Feb. 1789).

[3] It appears from the marriage registers of St. John's Church, Calcutta, that the senior Presidency Chaplain, the Rev. Thomas Blanshard, occasionally journeyed to up-country stations to officiate at weddings.

degree of control from Calcutta. The steady elaboration of codes of instruction and procedure, drawn up with the object of promoting efficiency, uniformity, and a high standard of administration, tended to set bounds to the Collector's power, whilst the Judicial Code of 1793 made him answerable before the ordinary Courts of Justice for unlawful acts done in his official capacity. The combined effect of these changes was to weaken the old tradition of arbitrary power; to abolish the idea that the District Officer was above the Law and irresponsible for his conduct except to the Executive.

Obedience to the standing orders of Government was enforced by fines and dismissal. No less than ten Collectors were either suspended or dismissed altogether between 1787 and 1792. In 1789 the Collector of Rangpur was fined Rs 100 for disregarding the 49th Article of the Revenue Regulations which directed that "no Collector shall be authorised to depute his assistant upon any service for a longer period than ten days without the express permission of the Board of Revenue, nor to pay the allowances of any deputation without obtaining their previous sanction." [1] Failure to submit monthly revenue accounts and to remit the unappropriated surplus in the treasury, was regarded as a serious breach of the Regulations, and on 31 August 1787 Government decided that such negligence should cost the Collector a sum not exceeding half a month's pay for the first offence and a full month's pay for subsequent offences.[2] This penalty, indeed, was less severe than the one it replaced, for in November 1783 the Supreme Council had instructed the Committee of Revenue instantly to dismiss a Collector who omitted to send in his accounts with the required degree of punctuality. He was required to obtain from the postmaster at his station a receipt for the letter on the day of posting.[3] Overwork, and the wretched state of the roads, were the excuses most frequently made for these lapses. "If you cannot be prompt in sending in your monthly accounts," ran a typical warning, "we shall be under the disagreeable necessity of removing you from your post." [4] In November 1788 the suggestion was made that the fines imposed on the Collectors and others should not be appro-

[1] Bengal Board of Rev. Cons., 3 Sept. 1789.
[2] Bengal Rev. Cons., 31 Aug. 1787.
[3] *Bengal District Records (Dinajpur)*, i, 24.
[4] Bengal Rev. Cons., 29 Jan. 1787.

priated to the Company's use, but should be used for the relief of imprisoned debtors and of the poor; for the Charity Orphan House in Calcutta which was under the charge of the vestry; and for finishing the Church, or for other charitable purposes. But this proposal, which was originated in the Board of Revenue by the Acting President, proved to be controversial, and the following conversation was entered in the Minutes:

"*Mr. Johnson.* I agree.

"*Mr. Mackenzie.* I not only refuse my assent to the Acting President's proposition, but move that we recommend it to the Governor-General-in-Council to withdraw the arbitrary and discretionary authority vested in us respecting pecuniary fines, an authority which I think liable to very great abuse.

"*Resolved* according to the opinion of the majority.

"The Acting President puts the question on Mr. Mackenzie's motion.

"*Mr. Johnson.* As I conceive the regularity of business much aided by the Regulation, I see no inconvenience attending it, and have heard no sufficient arguments against it, I am against Mr. Mackenzie's proposition.

"*Acting President.* I agree with Mr. Johnson.

"*Mr. Mackenzie.* The Governor-General-in-Council having on 25 April last thought proper to vest this Board with the power of summoning the Collectors to the Presidency for an explanation and defence of their conduct and also of suspending them from office, I conceive such power fully sufficient for the purpose of enforcing the performance of the duties assigned to the Collectors with regularity and assiduity, and therefore the question may be submitted to the Right Honourable Board."

On the 28th, however, the Governor-General-in-Council rejected this scheme for the appropriation of fines, and decided that the matter should lie over for consideration at the end of the year.[1]

More serious breaches of the revenue code involved suspension or dismissal. Censures, suspensions and removals from office, declared Shore, were worth more than volumes of precepts in enforcing obedience to the orders of Government, whose decisions, as he remarked, were certainly vigorous.[2] We saw that Mr. Sherburne, the Collector of Birbhum, was dismissed without

[1] Bengal Rev. Cons., 28 Nov. 1788. It does not appear that anything more was done.

[2] *Shore Corr.*, i, 160.

warning for sending treasure to Calcutta in an irregular manner. In May 1790 Mr. Pye, who was in charge of the Twenty-four Parganas, was removed partly because of his failure to realize the revenue and partly on account of his disobedience to orders in not keeping a regular diary of his proceedings.[1] Mr. Henckell, the Collector of Rajshahi, was deprived of his post in December 1791 for " wilful disobedience or designed inattention to orders " in spite of his plea that a long and severe illness was responsible for his inability to work. Government, no doubt, took up the position that he should have temporarily resigned his post until his health had been restored.[2]

In May 1788 the Collector of Sarqar Sarun was suspended for having granted deductions of rent without orders from Government. He explained that the remissions were merely temporary, and in November he was restored to his station, but he lost six months' pay and allowances.[3] The Collector of Dacca, Mr. Day, was suspended in December 1788 because of a great deficiency in the collections which he attributed solely to the badness of the season. Government decided that there must be an investigation on the spot and appointed a commissioner to conduct the inquiry and take charge of the District.[4] It was further alleged against the Collector that he had accepted a bribe of Rs 8,000 from a zamindar in return for a peculiarly favourable revenue settlement.[5] He stoutly maintained his innocence, but acknowledged that he could not prove it because the two individuals who were alone capable of vindicating his character were dependents of the zamindar. In these circumstances, combined with the fact that the zamindar acknowledged that the money had been returned to him, Government agreed to allow the Collector to resign the service and to proceed to Europe.[6]

As a result of the greatly improved standard of discipline which Cornwallis introduced into the civil service, Peiarce, the Collector of Midnapur, was suspended from his post in March 1788, although his twenty-three years' service with the Company had never been marked by the slightest censure by his superiors, and although for many months before his recall to Calcutta he had been seriously ill and almost unaided in his work, his head

[1] Bengal Rev. Cons., 28 May 1790.
[2] *Ibid.*, 30 Dec. 1791.
[3] *Ibid.*, 26 Nov. 1788.
[4] *Ibid.*, 1 Dec. 1788.
[5] *Ibid.*, 1 Dec. 1788; 9 Dec. 1789.
[6] Bengal Board of Rev. Cons., 14 Dec. 1789.

assistant being absent from the station and his second being too inexperienced to be of use. It was charged against him that in the year 1786 he had made remissions of rent to the amount of Rs 61,000, for the relief of zamindars who has sustained losses by drought and flood, although, these admitted losses notwithstanding, the zamindars, it was alleged, were sufficiently prosperous to pay their rents in full. If he had had no information regarding their capacity to pay, his ignorance rendered him unfit for his post; if he had possessed the information, he had been culpable in withholding it from the Board of Revenue which, upon his representations, had acquiesced in the remissions. It was a cruel blow to a man who had given so much faithful service to his employers; his illness continued, and, a few months after his suspension, he died.[1]

Failure to realize the revenue was certain to call forth an unpleasant communication from the Board of Revenue, and a Collector's efficiency was to a considerable extent measured by the smallness of his outstanding balance.

Three instances of alleged oppressive conduct on the part of the Collector were brought to the notice of Government during these years. In the first case thirty-three ryots went to Calcutta to lodge complaints against Mr. Heatly, the Collector of Purnia, and his Indian diwan. They alleged that on one occasion twelve ryots had been unjustly imprisoned; that the Collector had accepted a present of Rs 18,000 from the diwan who had received his appointment twelve months previously; and that the Collector was carrying on private trade to the oppression of the people. He replied that the charges were fabricated by persons anxious to avoid payment of the revenue and who had been trying to stir up trouble. In accordance with the usual practice a commissioner was sent to make inquiries, and after ten months had elapsed the defendants were acquitted, the Governor-General-in-Council observing that the charges appeared to be without the slightest foundation.[2]

A similar decision was reached in the case of Mr. Dawson, Collector of Murshidabad, who was accused of extorting money. His diwan and some minor officials, however, were dismissed.[3] He had been so ill that he did not desire to resume his station,

[1] Bengal Rev. Cons., 5 Jan. 1789; Bengal Public Letter to Court, 6 Nov. 1788.

[2] Bengal Rev. Cons., 1 April 1789; 3 Feb. 1790. [3] *Ibid.*, 19 Aug. 1789.

and his request for leave to resign the service and return to Europe was accepted.[1] In May 1789 Mr. Adair, another Collector, was suspended for letting lands in farm without authority, and was later removed from his office on this account, but further charges of corruption preferred against him by an Indian were all, with one exception, withdrawn, and that one could not be proved. He was then permitted to resign the service.[2]

The severe treatment which Cornwallis prescribed for officers who had in any way failed in their duty shows his anxiety to give adequate protection to the people. Charges of bribery and oppression against the Collectors were few in number during his term of office, and there is evidence that the officials were generally popular with the people, and that they were genuinely anxious to promote their well-being. British administration, it was felt, had increased the security of property, and individuals suffered less oppression than under the rule of the Nawabs. The principal inhabitants of the Bhagalpur District erected a monument to the memory of their Collector, Cleveland, who died in 1784 at the early age of twenty-nine.[3] G. F. Grand, who was removed from his Collectorship of Tirhut as a result of the reorganization of the Districts in 1787, and who always had a very good opinion of himself, asserted that he had been " almost venerated " by the people, and that when he took leave of them, their tears accompanied him from his place of residence to the banks of the Ganges, twenty-five miles away.[4]

Mr. Henckell, who undermined his health whilst in charge of the Jessore District, and who, as we saw, was unfortunate enough

[1] *Ibid.*

[2] *Ibid.*, 20 May 1789; 20 Jan. 1790; Bengal Board of Rev. Cons., 13 July 1789. It was alleged that he had received a bribe of about Rs 300, but there was no proof that the money was placed to the Collector's account with his privity or consent.

[3] *Shore Correspondence*, i, 89. Another monument, erected by the order of Government, bore the following inscription:

" To the memory of Augustus Cleveland, Esq., late Collector of the districts of Bhagalpur and Rajmahal, who, without bloodshed or the terror of authority, employing only the means of conciliation, confidence and benevolence, attempted and accomplished the entire subjection of the lawless and savage inhabitants of the Jangaltarai of Rajmahal, who had long infested the neighbouring lands by their predatory incursions, inspired them with a taste for the arts of civilised life, and attached them to the British Government by a conquest over their minds—the most permanent as the most rational of dominion. The Governor-General and Council of Bengal in honour of his character, and for an example to others, have ordered this monument to be erected. He departed this life on the 13th day of January 1784, aged 29." (B M. Add. MSS. 39871, fo. 33.)

[4] Grand, *Narrative*, p. 121.

subsequently to be dismissed from the Rajshahi station, made himself so much liked by the poor salt manufacturers in the Sundarbans that they erected his statue in their midst.[1] At the request of many influential Indians in the Bihar District, Mr. Seton, the Collector, forwarded a petition to Government in which they expressed their appreciation of his predecessor's merits, and acknowledged the "comfort and happiness which they enjoyed from his upright and judicious conduct." "I conceive the transmission of the petition," remarked the Collector, "to be an act of public duty; and it is with much satisfaction that I discharge it, since my official situation furnishes me with daily proofs that it contains a just tribute offered by sincere gratitude to real merit." Signed by eighty-nine persons, the petition ran as follows:

"We, the principal inhabitants of Bihar, who have enjoyed comfort and happiness under the protection of Mr. Thomas Law, and through the wisdom and uprightness of his administration have ever been maintained in the possession of our just rights, presented an address to him at his late departure for Calcutta, expressive of our grateful sense of his merits and of the benefits which we derived from them. But, as he still continued in this country and had a seat at the Board of Revenue, we then forbore requesting that our satisfaction with his conduct might be made known to the Governor-General-in-Council lest it might have been imputed to interested motives, and seemed rather to originate in the hope of receiving *further favours* from him in his station of member of the Board, than in gratitude for obligations *already conferred*. As, however, it is now reported (to our great mortification) that Mr. Law is about to return to Europe, and as he, of course, can no longer be of any service to us, who are already much indebted to him, and who can make no return but thanks, we therefore request that our grateful sense of the obligations we have received from him, may *now* be made known to the Governor-General-in-Council." [2]

Society in the Districts was very limited. Thackeray described his Collector of Boggley Wollah as living in a fine, lonely, jungly place, and scarcely seeing a Christian face except twice a year, when the detachment arrived to carry off the revenues which he had collected, to Calcutta. His nearest colleague was forty miles

[1] *Calcutta Gazette*, 24 April 1788.
[2] Bengal Rev. Cons., 11 Feb. 1791. (A translation.)

away and there was a cavalry station thirty miles farther.[1] "All retired stations in this country," wrote an Assistant Collector in 1805, "are alike in general, the only difference being a member or two more to the society, or the near vicinity to a city where society may be had." [2]

The Collector's European associates would normally be his Assistants, either one, two or (in one District) three in number, a surgeon, and, generally, an officer in charge of a detachment of either European troops or sepoys. In some Districts there were also a Brigade Chaplain and a Resident of the Company's Factory. European traders were usually beneath the Collector's notice, though he could associate without loss of dignity with the more respectable private merchants. Some of the Collectors were married, although not all of them had their wives in the country. Shore married whilst he was at home in 1786, but when, a few weeks later, he sailed again for Bengal, he left his wife behind.[3] The terrors of the long voyage and the reputed deadliness of the Indian climate tended to keep European women out of the tropics. One gathers from contemporary narratives that matrimonial ventures were frequently unsuccessful. "My husband is rich, as rich, or richer, than I could desire," wrote a well-known lady in 1779, "but his health is ruined, as well as his temper, and he has taken me rather as a convenience than as a companion, and he plays the tyrant over me with as much severity as if I were one of the slaves that carry his palanquin. . . . What a state of things is that, where the happiness of a wife depends upon the death of that man who should be the chief, not the only source of her felicity. However, such is the fact in India: the wives are looking out with gratitude for the next mortality that may carry off their husbands in order that they may return to England to live upon their jointures; they live a married life, an absolute misery, that they may enjoy a widowhood of affluence and independence." [4] Lindsay's assistant married the first European lady who appeared at Sylhet, but the marriage turned out badly, and "she drove the poor devil to his bottle, to which he soon after fell a victim." [5] Since the number of European wives was very small, the number of native mistresses was correspondingly large. It was said that one of the first

[1] *Vanity Fair*, Chapter III.
[2] *Bengal, Past and Present*, xxix, 127.
[3] *Shore Correspondence*, i, 125.
[4] *The Good Old Days of Hon. John Company*, i, 72.
[5] *Lindsay*, iii, 221.

duties of a young civilian was to "stock a zenana," but the "luxury of a large seraglio was reserved for those who were high in the service and received large emoluments." [1]

"A country life in India," declared one of the Company's servants, "is dull, gloomy, spiritless and solitary, and a man doomed to it is much to be pitied if he has not lasting amusements and resources within himself. The man whose happiness depends upon foreign and external circumstances, will experience many weary hours, which he knows not how to employ, and from which he cannot fly." [2] There were few amusements for him, especially during the rainy season, but during the cold weather hunting was a favourite sport. Lindsay described wild boar hunting as "a bold and manly amusement, in which both courage and dexterous horsemanship are required." Boars were killed with a heavy spear three feet in length, but Lindsay preferred to meet tigers and leopards with fire-arms.[3]

The dignity of his position required the Collector to be surrounded with much pomp and ceremony. His establishment of servants amounted to not less than twenty or thirty. In addition to his cook, butler, table-boys, durwan, water-carrier, tailor, he needed several gardeners, grooms, and bearers for carrying the palanquin in which he travelled about. And since he had to be self-sufficing so far as his table requirements were concerned, he had to keep a staff of servants to look after his poultry and his cows, and to bring fish daily from the rivers.[4] Some of the Collectors employed an English servant, sometimes to manage the large household, sometimes to help him with the office correspondence.[5]

[1] Marshman, *Life and Times of Carey, Marshman and Ward*, vol. i.
[2] *Bengal, Past and Present*, xxix, 133.
[3] *Lindsay*, iii, 161.
[4] *Bengal, Past and Present*, xxix, 144.
[5] Bengal Public Cons., 4 Jan., 18 Jan., 23 Jan. 1788.

CHAPTER X

CONCLUSION

CORNWALLIS had originally stipulated that his appointment should terminate at the beginning of 1791, but the outbreak of war with Tipu of Mysore compelled him to remain at his post until 1792, and then his anxiety to complete his judicial reforms caused him to stay until 1793, although, as he said, " the situation of my private affairs, my own time of life, the critical age of my son, and the attack upon my borough," demanded his return to England.[1] He had promised Dundas that he would not leave India before his successor's arrival, for both men were strongly convinced of the undesirability of another *interim* Governorship, and Cornwallis declared that he would suffer anything rather than permit Speke, the senior member of Council, to take the Chair even for a month.[2] As long ago as August 1787 he had requested Dundas to provide against the possibility of the temporary succession of the senior Councillor, by sending out a sealed order appointing Sir Archibald Campbell,

[1] To Dundas, 28 April 1792. (Melville Papers.) His only son, Charles, was born in 1774.

[2] Of Speke, who succeeded Stuart as senior Councillor, Cornwallis wrote (13 Jan. 1792): " There is no hold whatever on a man so wonderfully eccentric ; neither a regard for his own interest and character nor the public welfare and the honour and faith of government would weigh an instant against one absurd and pernicious caprice which interested men may have had art enough to work, or his vanity to adopt.

" He never comes unprejudiced upon any question, but suffers himself to be influenced by the partial representations of the party which can get possession of his ear, and he would screen or even promote the greatest delinquent if he happened to be one of his old friends in the service ; and although I believe no man ever thought so totally wrong upon any subject as he does upon the whole business of the Bengal Government, yet he has acuteness and information enough to be capable of embarrassing many colleagues who might actually happen to differ widely in opinion from him, and you must also recollect that in case of Stuart's and my departure, he would have an opportunity of calling in a third member, who in all probability would be the most improper man in the whole service for that situation. In short, if Speke was an acknowledged fool or a capable rogue I think he would be a much safer Governor-General." (Melville Papers.)

Governor of Madras, his successor, in the event of his own death.[1] In June 1792 he declared that he hoped the Supreme Government would never again be put into the hands of a Company's servant. "It is very difficult," he pointed out, "for a man to divest himself of the prejudices which the habits of twenty years have confirmed, and to govern people who have lived with him so long on a footing of equality; but the Company's servants have still greater obstacles to encounter when they become Governors; for the wretched policy of the Company has, till the late alterations took place in Bengal, invariably driven all their servants to the alternative of starving or of taking what was not their own, and although some have been infinitely less guilty in this respect than others, the world will not tamely submit to be reformed by those who have practised it in the smallest degree." [2] Though he recognized Shore's capacity, Cornwallis could not consider even him as a proper exception to the rule he wished to see adopted, and declared that he would have been better pleased to deliver over the Government to a stranger of rank and character with ability much inferior to that of Shore.[3] The latter's arrival on 10 March 1793 from England, however, did relieve Cornwallis of the painful necessity of putting "poor, honest Speke" into the Chair.

Cornwallis left India in October 1793. The Court of Directors had already passed a resolution that he had displayed "uncommon zeal and ability" in the management of the Company's affairs, and had voted him a pension of £5,000 for twenty years.[4] Until a few years ago there stood in Cornwallis Square in Madras a statue of the Governor-General, erected in 1800 by the principal inhabitants and the civil and military servants of the Company "as a grateful testimony of the high sense they entertain of the conduct and actions" of his Lordship. But the people of Madras have long since ceased to respect the name of Cornwallis, and the statue has been removed to a more secluded site in the reading-room of the Connemara Library.

During his seven years in India, Cornwallis won the good opinion, confidence and respect of almost all with whom he came in contact. No one realized his good qualities more than Shore,

[1] To Dundas, 12 Aug. 1787. (Melville Papers.)
[2] *Ibid.*, 18 June 1792. (Melville Papers.)
[3] *Ibid.*, 7 March 1793. (Melville Papers.)
[4] Seton-Karr, *Selections from the Calcutta Gazettes*, II. 111, 116.

his right-hand man and successor.) "Taking Lord Cornwallis for all and all," he wrote, "the country will not see his like" [again]. "His principles were always right." "I esteem, respect and love him. Our objects are the same, and we never disagree in the means. We debate and yield alternately, like people who prefer the public good to the reputation of their opinions." [1] Sir William Jones declared that he was the most justly popular and perhaps one of the most virtuous governors in the world.[2] Colonel Pearce informed his friend Hastings that Cornwallis had "given a new face to things in India," and that the people "see the revival of Hastings in him." [3] "He, like yourself, dignifies the chair and fills each heart with gladness; he has raised us again out of the mire of meanness and baseness into which Macpherson and Sloper had plunged the English name." [4] During his impeachment Hastings himself wrote to Cornwallis (26 March 1788): "I hear with pleasure from all quarters and even from the disappointed, testimonies of the highest approbation bestowed on your Lordship's administration, and sincerely hope that you will meet with the due return of justice and gratitude from your country." [5] Pursuing our way through the multitude of letters which Hastings received from his correspondents in Bengal, we do, on rare occasions, meet with some depreciatory references, but they were generally made by prejudiced people "who lacked advancement."

His reluctance to accept the office of Governor-General shows that he was not actuated by motives of vulgar ambition; the fact that he did accept it against his inclinations proves that he could subordinate his personal desires to the welfare of the country. In India he lived as simply as was consistent with his position, and disliked pomp and ceremony. In manner he was cheerful and affable, though always dignified. He entertained most hospitably, frequently having twenty or thirty guests to dinner. But he never encouraged them to incapacitate themselves according to the custom of eighteenth-century Calcutta society, and he himself always partook sparingly. On the few occasions when he consented to dine out, he left the party at an early hour.[6]

Cornwallis, indeed, was a not unworthy representative of the

[1] *Shore Correspondence*, i, 166, 259, 260.
[2] *Works of Sir W. Jones*, ii, 130.
[3] B.M. Add. MS. 29170, fo. 346.
[4] *Ibid.*, 29170, fo. 262.
[5] *Ibid.*, 39871, fo. 16.
[6] Hickey, *Memoirs*, iii, 292–4.

class from which he sprang. In the eighteenth century it was regarded as a peculiar duty and privilege of the aristocracy to devote their lives to the public service; and his own official career was long and varied and honourable. He was perhaps the ablest of the English generals who fought the American colonists. He again showed his military capacity in the war with Tipu of Mysore (1790–2). He did not bring his career of public service to a close, as his age would have entitled him to, upon his return to England in 1793; five years later he was appointed Viceroy of Ireland, in which office, at a critical period of the country's history, he distinguished himself. In 1802 he was one of the plenipotentiaries who negotiated the Treaty of Amiens; in 1805 he was again sent out to India as Governor-General, and there, after a few months' residence, he ended a long and distinguished career.

He was not at all a brilliant man, and as literary compositions his Despatches compare very unfavourably with those of either Hastings or Wellesley. But he possessed many qualities of mind and heart which inspired confidence in others: devotion to duty, modesty, perseverance, moderation, the art of conciliation, willingness to accept the advice of those who possessed a more expert knowledge of a subject than himself. Circumstances gave him two considerable advantages over Hastings. He possessed the confidence of the Court of Directors, and the friendship of the Prime Minister and the President of the Board of Control. And whereas three out of the four members of the Supreme Council were, after 1774, without any previous experience of Indian conditions, Shore, at any rate, was an expert administrator with many years' service to his credit. Moreover, as we have seen, the Act of 1786 had greatly increased his authority in Council. In their Despatch of 12 April 1786 the Directors forbade the Governor-General-in-Council to make any essential changes in the administrative system without their consent. Yet in direct disobedience to these positive instructions, Cornwallis made a fundamental change in the administration of criminal justice at the end of 1790, and an equally important change in the administration of civil justice in 1793 without waiting for the Directors' approval.

It is no disparagement of Cornwallis's work to point out that he completed what Hastings had begun. Hastings had decided in 1772 to take full responsibility for the government of Bengal,

to implant the sovereignty of the Company in the constitution of the Province, and thereby to abolish the mistaken system of dual government which Clive had started in 1765. Cornwallis's judicial and Police reforms completed this constitutional change. Hastings had seen that the Company's servants would never be likely to act honourably so long as their salaries were merely nominal and private trade remained permissible. In 1774 he had prohibited the members of the Supreme Council from engaging in trade, and had increased their emoluments by means of a commission. In 1781 he introduced fixed salaries for the members of the Committee of Revenue, and a commission of 1 per cent. of the net revenue had replaced perquisites. Cornwallis was able to extend these improved scales of pay and allowances to all the senior servants, though he was not in a position to extend the prohibition to trade to all officials.

In bringing the administration of criminal justice under English control in 1790, Cornwallis was continuing the policy of Hastings. For in 1772 Hastings too had realized the danger of entrusting power to irresponsible Indian officials who were frequently corrupt, and he had made the Collector the superintendent of the District Criminal Court. To substitute English for Indian Judges was merely the next step. The institution by Hastings of Indian Magistrates, charged with the supervision of the mufassal police and with the duty of arresting and committing for trial, did not prove a success, and he abolished these offices in 1781, investing English officials (the Judges of the Civil Courts) with magisterial powers. The separation of revenue administration from civil jurisdiction, the most important feature of the reforms of 1793, had been foreseen by Hastings who had begun the change in 1780: the Judges whom he then appointed to the charge of the new Civil Courts were wholly unconnected with the revenue. This bifurcation of function was only partial, since the Collectors were still authorized to decide causes relating to the revenue, and consequently the jurisdiction of the Civil Judge and that of the Collector were continually clashing. It is probable that if Hastings had stayed longer in India he would have remedied this situation, not, as Cornwallis tried to do in 1787 (in accordance with the orders of the Court of Directors), by reuniting the offices of Collector and Civil Judge in one person, but as Cornwallis did in 1793: the more obvious solution. In the matter of substituting English Criminal Law for Muham-

madan, Cornwallis went only a little further than Hastings. The latter was of the opinion that until the constitution of Bengal "shall have attained the same perfection" as the English, "no conclusion can be drawn from the English law that can be properly applied to the manners and state of this country." Although the only legislative change which he had made was to mete out a new and very severe punishment to dacoits and their families,[1] he frequently interposed the executive authority of the Supreme Council to alter unsuitable punishments which the Muhammadan Law prescribed. Cornwallis made slightly more use of his legislative power than did Hastings, yet he too was extremely cautious in effecting changes which in theory he felt to be excellent but which in practice might be inopportune; and his caution is the more commendable because he held such strong views of the superiority of the Criminal Law of his own country. In general, therefore, Cornwallis, with his greater power and security from vexatious interference, criticism, and obstructionist tactics, quietly carried on the work which Hastings had initiated.

If there be features of his reforms which are open to criticism, it is evident that not only Cornwallis himself, but also his expert advisers, and Hastings too, are to be held partly responsible. Perhaps the most controversial of all his innovations was the substitution of English for Indian Judges of the Criminal Courts: a change which, as we have seen, was based on his deeply rooted conviction that Indians were unworthy of trust, that they must no longer be allowed to hold high and responsible offices, but that they must be replaced by Europeans in whose capacity and integrity he had confidence. Indians might be permitted to hold minor posts, since there were not enough Company's servants to fill them. Whereas Macpherson too had been in favour of collecting the revenue solely by English agents, the Court of Directors had declared that "it would in many cases not be practicable, and, in general, by no means eligible in point of policy. At the same time, when the talents of the more respectable natives can with propriety and safety be employed in the management of the country, we think it both just and politic to carry that principle into effect." They added: "We do not

[1] The Supreme Council observed in 1785 that "this Regulation does not appear to have been long, if it ever was, regularly enforced." (Bengal Rev. Cons., 29 Dec. 1785)

hesitate to declare, as a leading feature of our future system, that the multiplication of British subjects in the interior Districts or in the subordinate detail of Indian offices, is not necessary to good government nor productive of any benefit to the Company adequate to the vast expense attending it. We conceive also that the natives in general are most competent to the duties of detail in that climate, and in fact have always conducted the laborious parts of them." [1]

In the first place, Hastings himself had displayed a certain suspicion of the capacity and integrity of Indian Judges, both in appointing the District Officer to superintend the local Criminal Court and in putting the Supreme Council in control of the proceedings of the Nizamat Adalat. In the second place, although both Shore in 1782 and the Court of Directors in 1786 were in favour of retaining Indian Judges of the Criminal Courts, both, nevertheless, fully approved the great change which Cornwallis effected in 1790. In the third place, Parliament and the British Government at home accepted the policy of confining all the important posts to Europeans, for the Act of 1793 which renewed the Company's Charter expressly laid down that only the Company's civil servants might fill offices the salaries and emoluments of which exceeded £500 a year. In the fourth place, the majority of the Governor-General's advisers were firmly convinced of the inexpediency of employing Indians in high judicial positions, and it was upon their advice that Cornwallis acted. It may be noted, too, that Shore never doubted the expediency of the policy of having only European Collectors and Civil Judges. He declared in 1782 that he considered the people of Bengal "ill calculated for these important trusts." [2] Cornwallis had evidently made up his mind that the whole system must be subverted even before he called for reports from the Magistrates, for, as we saw, he informed the Directors in August 1789 that all Regulations to reform the Criminal Courts would be "useless and nugatory, whilst the execution of them depends upon any native whatever." The reports which he received the following year merely confirmed an earlier opinion.

It is interesting, however, to notice that there was a minority of Magistrates who were not in favour of the dismissal of the Indian Judges. The Collector of Jessore, for example, suggested

[1] Bengal Revenue Letter from Court, 12 April 1786
[2] Bengal Rev. Cons., 18 May 1785.

that either the Magistrates should be authorized to appoint some one to attend the Criminal Courts to see that trials were properly conducted (in effect, Hastings' plan of 1772), or, alternatively, that the Judges should be required to transmit to the Magistrate a copy of the proceedings of trials sent to the Naib Nazim. Another Collector suggested that the Judges' salaries should be increased and that their appointments should be placed on a permanent footing, as in England. It was absolutely necessary, said a third, that Indian Judges should be employed, and the only question was, how they could be made to function more satisfactorily.[1]

Cornwallis's view that the ultimate end of British policy should be the complete substitution of the English penal code for the Muhammadan, was not held by the majority of expert civilians of the time. Both Verelst, who was Governor of Bengal from 1767 to 1769, and Hastings, considered that the people should be governed by their own laws, to which they had long been accustomed, and that, consequently, justice should continue to be administered by Indian Judges, although it might be expedient to have the final Court of Appeal staffed by European Judges, assisted by worthy Indians. Both Shore and the Court of Directors were of the opinion that the abolition of the barbarous punishments which the Muhammadan Law prescribed was the only expedient change. Shore wrote in 1788: "The criminal code of the latter [i.e. Muhammadans] which prevailed before the establishment of the power of the English, has been adopted and confirmed by them, and though it may be in some respects repugnant to our laws, I do not see that it can with propriety be altered. The adoption of our code would be highly offensive to the principles and feelings of the Muhammadans and would require a numerous train of Judges regularly instructed in the laws of England. The proposition has not hitherto been made, and it is needless to detail the infinite difficulties which oppose the introduction of it."[2] That was the view, too, which most of the Magistrates adopted in their reports of 1790. Only one ventured to suggest that a code might be formed "by a judicious selection from the criminal laws of England, and those of the Muhammadans and Hindus."[3] It was commonly held in the

[1] Bengal Rev. Cons., 3 Dec 1790.
[2] Bengal Secret Dept of Reform Cons, 9 April 1788.
[3] Bengal Rev. Cons, 3 Dec. 1790.

eighteenth century that the English penal code was a monument of perfection ; that it was suitable only to a free people, and that, since the people of Bengal were not yet ready for freedom, they could not be governed by the laws of a free people. Verelst and Hastings recognized that the laws must be adapted to meet the needs of society ; that the introduction of English criminal law, which recognized about 160 capital offences, including forgery, which in India was not considered to be at all disreputable and criminal, and petty theft, would be inadvisable and unjust to the people, whose social customs, too, such as polygamy and child-marriages, were completely at variance with Western principles embodied in a Western code of criminal law.

Yet whilst Cornwallis was excessively confident of the inherent superiority of English law, he did undoubtedly pursue the right policy in modifying the Muhammadan code by purging it of its most obvious crudities and barbarities. Hastings had pursued that policy by executive, though not legislative, acts. Cornwallis would have made a serious blunder if he had actually attempted those sweeping innovations which were in his mind, without adapting the English penal code to the actual circumstances of Bengal society. It was fortunate for India that the Indian Penal Code, which is based on the English code, was not framed until the manifold imperfections, anomalies and defects of the English code had been removed by Parliament.

Cornwallis's Code of Civil Procedure, which the older historians like James Mill so unsparingly criticized, was, after all, based on the earlier Codes which Hastings and Sir Elijah Impey, the Chief Justice of the Supreme Court of Judicature, had compiled, and for which a great modern lawyer, Sir James Stephen, had a word of praise. The technicalities which were copied from the procedure of English Courts were, after all, designed to ensure fairness, impartiality and efficiency in the administration of justice. The proper remedy for the overworked state of the courts of justice after 1793 was not the imposition of taxes on suitors nor the removal of Regulations which, whilst lengthening the hearing of suits, promoted fairness and impartiality, but the creation of more Courts, and especially the grant of much wider powers of jurisdiction to Indian judicial officers.

If Cornwallis's advisers, both in the Council Chamber and in the Districts too, must bear part of the responsibility for defects in his reforms, they must at the same time receive some of the

praise to which his reforms entitle him. He was fortunate in having the support of a civil service which, if not brilliant in character, contained many men of real ability, integrity and devotion to duty. In this respect he was much better served than Hastings. Much more than is the case at the present day, the District Officer had then a real influence in determining the policy of the Government. We have seen that many of the judicial reforms which Cornwallis effected were first suggested by the Collectors who had a good knowledge of local conditions, and who were obviously in closer touch with the people than the Council at the Presidency. The Collectors were honestly anxious, not merely to satisfy their superiors and their employers, but also to improve the condition of the people under their charge. For the most part they were inspired by a high sense of duty and devotion to the public service, and by a high sense of responsibility, which became part of the tradition of the Indian Civil Service. Though they did not and could not expect their work to be appreciated by the people themselves, they pursued their endless tasks in the firm belief that British rule in Bengal would become, in the words of one of them, "a blessing destined by the inscrutable direction of an all-benevolent Providence." [1]

Cornwallis had no conception of self-government as the goal of British policy. "Although," he wrote in 1793, "we hope to render our subjects the happiest people in India, I should by no means propose to admit the natives to any participation in framing Regulations." [2] For the development of the idea of self-government as the ultimate end of British statesmanship, we have to wait a quarter of a century. In the time of Cornwallis the political conditions were altogether unfavourable to the growth of such a concept. Cornwallis believed that prosperity, which British rule could do much to promote, would reconcile the people to an alien rule and make them forget the loss of political independence. "When the landholders," he wrote, "find themselves in the possession of profitable estates, the merchants and manufacturers in the enjoyment of a lucrative commerce, and all descriptions of people protected in the free exercise of their religion, both the numerous race of the long-oppressed Hindus, and their oppressors the Muhammadans, will equally deprecate the change of a Government under which they

[1] Bengal Rev. Cons., 3 Dec. 1790.
[2] *Second Report of* 1810, App. 9. Minute of 11 Feb. 1793.

have acquired, and under which alone they can hope to enjoy, these inestimable advantages." [1]

The Cornwallis methods of administration came to be dignified by the name "the Cornwallis system," the "system of 1793." The infallibility of the 1793 Regulations came to be regarded as axiomatic and the "system" acquired a sacrosanctity and reputation for perfection which it retained without any effective challenge for a whole generation. It was not until the time of Munro, Elphinstone and Metcalfe that the reaction against the excessive eagerness to establish English institutions and to govern by English ideas made progress.

Cornwallis was actuated by the best intentions—by a deep and genuine anxiety to improve the condition of the people, but his knowledge of the means by which this desirable object was to be attained was altogether inadequate, and, indeed, he seemed to think that good intentions alone were necessary. He was anxious "to make everything as English as possible in a country which resembles England in nothing." [2] Hastings had realized that a judicial system, in order to be efficient, must be adapted to the manners and customs of the people for whose benefit it is intended. The judicial reforms of Cornwallis failed to fulfil this requirement. He fell into the common error of supposing that his judicial machinery would work as he intended it to work, and that what was applicable to one state of society was equally applicable to another. He had an excessive faith in the value of codes and courts of justice as a means of preventing oppression. Had he been legislating for English people his courts and codes might have worked according to his intentions, and in protecting English farmers from the exactions of grasping landlords they would probably have proved successful, for Englishmen were in the habit of resisting oppression. But his laws were made for the people of Bengal as though they were Englishmen, and then surprise was expressed that these laws failed to operate. For centuries the people had lived under the shadow of despotism; their spirit had been crushed; for the most part they were accustomed silently to submit to any illegal exactions of the zamindars and government officials. Until the people could acquire enough courage and independence of spirit to resist unlawful demands, the Courts were necessarily incapable of

[1] *Second Report of* 1810, App. 9. Minute of 11 Feb. 1793.
[2] Gleig, *Life of Sir Thomas Munro*, III, 381.

protecting them. Gradually the truth was realized that a law which might be admirable in England might be totally inapplicable to Bengal; and that the only way to protect the people was to restore to the Collector, the official who was most interested in their welfare and who had an intimate knowledge of their manner of life, those magisterial powers of which he had been deprived in 1793. It was not enough to wait for the people to make complaints; it was necessary to seek for complaints, so that, after a summary examination, the Collector could recover the amount illegally exacted and punish the offenders. As things stood, Collectors who were keenly anxious to improve the condition of the people were compelled to look on whilst the ryots were being oppressed, because redress could be given only by the Courts, to which the ryots either could not afford to go or were afraid to go. The Judges had little knowledge of the life of the people, and in 1817 Munro declared that nine-tenths of the men in the judicial line knew as little of India as if they had never left Great Britain. They were obviously unfit to hold the office of Magistrate and to control the Police, but it was not until 1816 that, on Munro's recommendation to the Court of Directors, a return was made to the earlier policy of concentrating the different powers of government in the hands of the chief land revenue officer in each District, and that the office of District Magistrate and the control of the Police were transferred from the Civil Judge to the Collector.

The effects of the Cornwallis system of administration on the people themselves remain to be briefly considered. The exclusion of the people from all effective share of the government of their own country was almost without parallel in the history of imperialism. Other conquerors, said Munro, had treated their subjects with violence and cruelty, but none had ever treated them with such scorn as had the British: had stigmatized a whole nation as unworthy of trust, incapable of honourable conduct, and fit to be employed only in menial situations. Subjection to a foreign yoke was calculated still further to destroy the national character and to extinguish national spirit. The Cornwallis system, therefore, was calculated to debase rather than uplift the people fallen under the Company's dominion. It took a whole generation of Indian civilians to discover that such a system was not only ungenerous and unworthy of the British people but impolitic. There was no incentive to self-

improvement, intellectually and morally, when all to which even the ablest men could aspire in the service of the Company was some petty position in either the revenue or judicial line which gave them neither social position, nor wealth, nor honour. In the military line, too, none could attain to any rank above that of a subahdar, which was as inferior to an ensign as was an ensign to the Commander-in-Chief. In a country containing many millions of people none but a European was trusted with so much authority as to order the punishment of a single stroke of a rattan to be administered. The Cornwallis system was grounded on the assumption that it was enough to give the country the blessings of peace and order, prosperity and an impartial system of justice. For long the question was ignored whether it ought not to be the policy of the Company's Government to improve the character as well as the economic condition of the people. Was not the system of excluding them from all important posts in government service calculated to maintain the destruction of the people's self-respect? Was it sufficient to justify their degradation by asserting that Indians were necessarily corrupt and could not be trusted to act honourably? Were petty, under-paid excise and customs officers in eighteenth-century England remarkable for their purity? Was it not true that the Company's European servants were notoriously lax until Cornwallis thought it necessary to purchase their honesty by increasing their lawful emoluments? Was it not reasonable to expect that if the same policy were adopted for Indians the same beneficial results would follow? The exclusion of the people from all offices of trust proved to be prejudicial to the public business. The multiplication of European administrators was no remedy. Quite apart from the prohibitive expense, it was not calculated to increase the efficiency of the service. For more and more it came to be realized that especially in the judicial line Indians were better qualified than Europeans to hear and decide both civil and criminal cases. The Zillah Judge, placed in too high a social position to have any general intercourse with the people, knew little of their manner of living; yet it was on his recommendation that the Governor-General-in-Council made new legislation. How could the laws be adapted to the circumstances and character of the people when those laws were passed at the instance of men whose knowledge of the people was so essentially superficial?

In certain respects the Company's Government was a definite

improvement on the native Government which it had destroyed. The people were more free from the calamities of external war and internal strife. Their persons and property were more secure; they could not be arbitrarily punished; their taxation was probably not quite so heavy. But these advantages were purchased at a heavy price. The people had no share in making the laws, and very little share in administering them. They were ineligible to any high office, civil or military; they were regarded as an inferior race. More than thirty years were yet to elapse before Sir Thomas Munro, the Governor of Madras, declared that the ultimate object of British rule in India was to "improve the character of our Indian subjects as to enable them to govern and protect themselves.

APPENDIX I

THE COMPANY'S TRADE IN THE TIME OF CORNWALLIS

THE expansion of the East India Company's trade with China, and the attempts made to increase the value of British exports to the East, are the chief features of the history of the Company's commerce during the last quarter of the eighteenth century. In 1786 the Court of Directors expressed the hope that the return of peace would bring about not merely a revival of trade, which had suffered severely during the war with France and the Indian Powers from 1778 to 1783, but also an appreciable increase.[1] During the next few years they were continually considering schemes to open up new markets for English manufactured goods. One criticism that had been repeatedly directed against the Company was that the character of its trade was such as to be of comparatively little benefit to home industries. British manufactured goods, of which woollens were the chief, were hardly saleable in India itself, the Company's chief market except China. Much of the woollen cloth which, by the terms of the Company's Charter, had to be sent to India, could not be profitably sold; a very small amount was required for European consumption, and most of the remainder was left to perish in the warehouses in Calcutta. The Directors were frequently compelled to acknowledge that their advices from India were full of excuses for the failure of the demand, and, so far were the Presidency Governments from being able to increase the demand, that they generally complained of a falling off with respect to every kind of woollen cloth.[2] There was a certain demand for these goods in China, but they could not profitably be sold in competition with Chinese silks. The Court of Directors, however, came to the conclusion that a very considerable market for British manufactured goods might be developed in Burma, and in 1797 they directed the Bengal Government "to turn their thoughts to that subject." Although Burma had only a small population, it was believed that the people were particularly partial both to Indian and to British manufactured goods.[3] The Directors, too,

[1] Bengal Public Letter from Court, 12 April 1786.

[2] *Parl. History*, xxx, 698.

[3] Bengal Political Letter from Court, 4 Oct. 1797; Bengal Pol. Cons., 1 Oct. 1799. Captain Cox's Despatch to the Gov.-Gen.-in-Council dated 15 Sept. 1798. Captain Symes, whom the Bengal Government had sent on an embassy to the

hoped that English woollens might be increasingly sold in Assam, Bhutan and Tibet. "It has long been the wish of the Company," they wrote on 14 March 1786, "that a trade might be opened up with those distant parts of India." [1] They considered it "a point of great importance that proper measures should be taken to promote among the people of the north-east boundary, a demand for the . . . products of Bengal, or of the woollens or other manufactures of Great Britain." [2] The situation of Tibet was such as to afford the Company grounds for believing in the possibility of increasing the sale of the products and manufactures of Britain and of Bengal. It had no apparent mineral wealth and had practically no manufactures. The Government was favourable to commerce. Trade was duty free, and was protected from the exactions of officials.[3] In March 1786, the Directors, who at various times had received information on the subject from the reports of Logan, Bogle and Turner, declared that a very beneficial commerce with Tibet, both in Indian and in British goods, ought to be practicable; and Bengal would receive, what was very much needed, a plentiful supply of gold. In the previous year Hastings had sent an agent to the Tibetan Court in order to promote commercial intercourse between the two countries. He reported that the trade by way of Bhutan had revived, and that the markets of the Tibetan capital were well stocked with English as well as Indian goods; and he sent to Hastings, in England, a specimen of Tibetan gold.[4] The Government, he said, was heartily anxious to encourage trade. The Directors wrote in March 1787: "The encouragement held out at Tibet by the Regent and his Ministers, who appear to entertain a very high respect for our national integrity of character, have made us sanguine in our expectations that a most beneficial commerce will very soon be established with that distant country, to the great advantage of the Bengal Provinces by a regular importation of bullion, and to the encouragement of the manufactures of Great Britain by increasing the vend for her commodities." [5] Since it appeared to be difficult, if not altogether impracticable, to carry on regular trade with Tibet by way of Nepal, the Government of Bengal was instructed to cultivate the goodwill and friendship of the ruler of Bhutan, who, it appeared, had recently given instances of his good disposition towards the English. "Upon the whole," concluded the Court of Directors, "the necessity of encouraging a commercial intercourse with the

Burmese Court in 1795 with the object of negotiating a commercial treaty, reported that in his opinion 1,500 pieces of broadcloth might be annually sold at Amarapura, the capital. (Bengal Pol. Letter from Court, 4 Oct. 1797.)

[1] Bengal Public Letter from Court, 14 March 1786.
[2] *Ibid.*
[3] Bengal Public Cons., 25 Nov. 1789.
[4] *Asiatic Researches*, i, 215; *Parl. Hist.*, xxvi, 165.
[5] Bengal Public Letter from Court, 27 March 1787.

territories of the Grand Lama, the inhabitants of which carry on a very considerable traffic with the Chinese and Northern Tartars, is so apparent that we have only to recommend it to your serious attention." [1]

The suggestion that the East India Company might open up a profitable trade with the countries to the north of Bengal was first made in 1773, when Mr. Hugh Baillie, who had come out to India as a sea captain in 1756,[2] addressed a letter on the subject to the Court of Directors. He stated that there was a possibility of starting an extensive and profitable trade with Assam, not only in salt and other products of Bengal, but also in British manufactured goods, particularly woollens; these would be paid for in moongha silk, black pepper, specie, and gold dust.[3]

The Governor-General-in-Council, however, took no steps to start trade relationships on the Company's account until 1787, but private traders, some licensed, some not licensed, were carrying on trade in the year 1780.[4] One of these, named Killican, in 1780, was given the monopoly of trade with Assam for a period of four years in return for an annual rent to the Company of 50,000 rupees.[5] His rivals at Goalpara protested against this grant, and in 1783 a Despatch arrived from the Court of Directors condemning and revoking the contract with Killican. In 1784 a Mr. Henry Lodge suggested that Government itself should take charge of the Assam trade under the management of a Resident at Goalpara, and that an annual profit of four lakhs might be derived from the sale of salt alone.[6] The proposal was referred to the Directors, who passed orders in their letter dated 14 March 1786. Although they declared that the assumption by the Company of the exclusive privilege of the trade with Assam was "directly contrary to that general principle of free trade by which we conceive the prosperity of the Provinces under our Government may best be promoted," they agreed nevertheless to give the scheme a trial, and Baillie, who had had eighteen years' experience of the Assam trade, was appointed Resident at Goalpara. He was instructed to investigate

[1] The hopes of the Directors were not realized, and within a few years the passes into Tibet were permanently sealed up. And the commercial treaty with Nepal which was negotiated in 1791 and signed on 1 March 1792 by an agent sent by Jonathan Duncan, the Company's Resident at Benares, was also barren of results. In the early 'eighties, the value of the trade between Bihar and Nepal had been about 2½ lakhs, but it declined later on. In 1792 the Gurkhas of Nepal made an unsuccessful attack on Tibet, and Cornwallis refused to send military assistance.

[2] Bengal District Records (Rangpur), ii, 49 n.

[3] Bengal Rev. Cons., 18 July 1787.

[4] The most notable of the seven merchants mentioned in Glazier's Report on the Rangpur District (1873) were Lear and Rausch, the latter a German by extraction.

[5] Bengal Rev. Cons., 13 June, 15 Sept. 1780.

[6] Bengal Rev. Letter to Court, 22 Feb. 1785.

the causes which had hitherto operated to impede the development of trade between Bengal and Assam, to obtain a general knowledge of the resources and productions of Assam, and to ascertain whether it would be practicable to negotiate a commercial treaty with the Raja. Government was to monopolize only the salt trade, and the trade in every other article was to be completely free.[1] But Assam fell into a condition of chronic civil war and anarchy, and Baillie was withdrawn at the end of 1789.[2]

From a report which Charles Malet, the Company's Resident at Poona, wrote on 8 August 1788 regarding the possibility of extending the sale of both British and Bengal products and manufactures in the Maratha countries,[3] it appeared that the Company might derive advantages from an accurate knowledge of the trade between Bombay and the Persian and Arabian gulfs. In 1789 therefore, the Governor-General-in-Council instructed the Government of Bombay and the Resident at Basra to ascertain what prospect there was of opening up an advantageous trade with Persia and Arabia in the produce and manufactures of Great Britain and India. "There is reason to believe from the extent of those countries and their dependencies that great commercial advantages might be reaped, could our merchants once settle a correspondence and obtain an establishment that should promise to be permanent and to secure their property from all hazard or loss except the common mercantile risk." [4]

We have already seen that although the agitation against the preservation of the Company's monopoly of trade between England and the East had not reached formidable proportions by the beginning of the Revolutionary and Napoleonic Wars,[5] the opposition of the English mercantile classes to the Company's monopoly made the Directors all the more anxious to conciliate the manufacturing interests by endeavouring to increase its volume of manufactured goods exported to eastern countries, to import an adequate quantity of raw materials for home industries, and either to limit, or prohibit altogether, the import into Great Britain of goods from the east which might compete with the products of British industry. For example, the Company began to import raw cotton from Bombay, and it encouraged the production of raw silk in Bengal although it was generally sold in London at a loss. During the years 1776–85 the total loss on its sale amounted to nearly a million pounds, and even after Cornwallis changed and improved the methods by which raw silk was supplied to the Company after 1787, it was still sometimes sold at a loss, and the

[1] Bengal Public Letter from Court, 14 March 1786.
[2] Bengal Revenue Letter to Court, 13 Feb. 1790.
[3] *Bengal: Past and Present*, xxxvii, 22 *sqq.*; Bengal Public Letter to Court 10 March 1789.
[4] Bengal Public Cons., 22 April 1789.
[5] See p. 3.

quantity exported from Bengal fell from an annual average of 560,283 lbs. during the period 1776–85 to an annual average of 319,832 lbs. during the years 1786–92.[1] Although silk worms had been imported into Bengal from China between 1770 and 1775 to improve the quality of the cocoons, and though the Italian method of winding silk had been adopted, with good results, the Directors continued to complain of the poor quality of the silk which its servants sent home and pointed out that the English silk industry, which ranked next in importance to the woollen industry, consequently suffered.[2] Similarly, saltpetre and indigo were sold at a loss, except, in the case of saltpetre, in time of war. The supply of indigo from the American colonies had been cut off at the beginning of the rebellion, but after 1780 supplies were obtained from Bengal. Because of the losses which the Company sustained,[3] the indigo trade was thrown open to private individuals in 1788, and its quality considerably improved during the next few years.[4]

In 1786 the Court of Directors made the first tentative efforts to sell Lancashire cotton cloth in Bengal;[5] the question at once arose whether the cloth could be extensively sold without injuring the native industry, which, said the Directors, "we conceive ourselves bound to protect to the utmost of our power"[6] "As you will perceive the rapid strides that are making by the manufacturers in the improvement of those goods, we rely on your using your utmost endeavours in causing the strictest attention to be paid by the weavers to the quality and fabric of the goods in general, and that your purchases be made on the most frugal terms possible, as it is from an attention to all these circumstances that we must depend for obtaining a preference for our own goods over those of the home manufacturers."[7] Significantly enough, the Directors in the same year gave orders that "for certain prudential reasons" no more cotton yarn was to be sent from India to England either as part of the Investment or in private trade.[8] The export of fabrics, however, continued without serious interruption until the outbreak of the French Revolutionary War dislocated European markets. The native industry retained its home market for another quarter of a century: since the revolution in the Lancashire cotton industry was still far from complete on the technical side.

The Company's critics endeavoured to prove that its monopoly

[1] Sinha, *Economic Annals of Bengal*, pp. 175, 254.
[2] Bengal Public Letter from Court, 12 April 1786.
[3] *Ibid.*
[4] *Sinha, op. cit.*, p. 257.
[5] Bengal Public Letter from Court, 12 April 1786. Three years earlier, samples of Manchester muslins had been sent to Calcutta, and the Directors requested the Governor-General-in-Council to endeavour to improve the quality and reduce the price of Bengal fabrics so as to increase their competitive value in English markets. (Bengal Public Letter from Court, 1 March 1783.)
[6] Bengal Public Letter from Court, 12 April 1786.
[7] *Ibid.*
[8] *Ibid.*

was not only hindering the expansion of Britain's markets for her manufactures, but was also injuring the economic prosperity of Bengal. Every year, they pointed out, the Company was withdrawing a substantial amount of the capital of the Province, in the form of the Investment, without returning any equivalent. Bengal could obtain compensation only if new customers were allowed to come and buy the surplus produce of the soil and the manufactures.[1] It was believed that if the trade were thrown open, the export of such articles as cotton, sugar, grain, hides and skins, would be considerably increased. The freight charges for goods sent home by the Company were very heavy—a circumstance which to some extent tended to restrict Indian exports to Great Britain to articles of little weight or bulk in proportion to their value. It was felt that the abolition of the Company's monopoly would be followed by a substantial lowering of freights, and that the export of the heavy-weight productions of Bengal would be stimulated. Private individuals were charged £28 per ton for freight, but it was calculated that if the trade were thrown open freight charges would drop to £4 a ton.[2] Freights at monopoly rates hindered the development of the export trade in Bengal sugar. Up to the British conquest Bengal had carried on a profitable trade in sugar with various parts of India and the Persian Gulf,[3] but owing partly to freight charges, partly to the heavy duties to which Indian-grown sugar was liable, and partly, no doubt, to the East India Company's desire to avoid arousing the hostility of the powerful West India "interest" in England, no attempt was apparently made to send Bengal sugar to England until after 1790, and even then the quantity despatched was but small.[4]

But the most valuable branch of the East India Company's trade was the China trade. Whereas the Indian Investment sold for an annual average of practically £2,000,000 between 1787 and 1790, China goods realized an average of about £2,660,000.[5] The

[1] *Law, op. cit.*, p. 28.
[2] *Ibid.*, p. 32.
[3] *Sinha, op. cit.*, p. 36.
[4] West Indian sugar, said Law, sold in London for from 50*s.* to 70*s.* per cwt. according to quality; good sugar grown near Benares could be bought in Calcutta for 18*s.* per cwt., and since it could be sold for at least 50*s.* in England, a good profit could be obtained. High freights hindered the export of other bulky articles like rice and wheat. Carolina rice sold for 23*s.* a cwt. in London; and it was believed that the best quality of Patna rice would sell for at least that amount. Wheat could be shipped from Bengal for about 7*s.* 3*d.* per quarter; the home price in January 1790 was 58*s.* If the trade were thrown open Bengal wheat, it was said, could be sold at a profit of upwards of 50 per cent. upon the cost, including freight charges. The freight for indigo from Bengal to London was from 4½*d.* to 7*d.* per lb.; from the West Indies only 2½*d.* Insurance from India was from 6 to 7 per cent.; from the West Indies only 2½ per cent. West Indian indigo was given a bounty of 6*d.* per lb., but Bengal indigo was taxed at the rate of 5 per cent. (*Law, op. cit.*, pp. 32–5, 73, 269, 271.)
[5] *Anderson, op. cit.*, App. VIII.

expansion of the China trade is the most interesting feature of the Company's commercial history during the second half of the eighteenth century. This trade development signally falsified the prediction which Dupleix had made in 1727—that Europeans would never prosper in their attempts to establish permanent trade relations with the Chinese, "peuples très inquiets." [1] During the 'seventies less than ten ships a year had sufficed to bring the East India Company's China investment to England; during the period of Cornwallis' Governor-Generalship the annual average had risen to twenty-two, whilst the tonnage of the vessels had also increased. The value of the goods imported from India and China had risen from an annual average of £3,329,000 in the 'seventies to £4,572,000 in the 'eighties, and to £5,103,000 during the years 1790–93, and the increase was wholly due to the increase of the China trade.[2] Moreover, England's trade was expanding much more rapidly than that of any of her European rivals. During the first half of the eighteenth century both the French and the Dutch had bought as much tea (the chief article of export) as the English; but during the period 1786–92 the English Company carried practically two-thirds of the tea exported from China: that is, an annual average of over 18,000,000 lbs. out of a total of about 27,600,000 lbs. Almost 85 per cent. of the trade in raw silk was in English hands. The English Company's ships represented more than a third of the European vessels which shared the China trade in all its branches; whilst, if the English "country" ships are included, England possessed almost three-quarters of the European vessels trading to China.[3]

But this trade was not carried on without difficulty. One of the chief obstacles was the reluctance of the Chinese to purchase British manufactured goods in exchange for their tea and silk. As Dupleix had long ago pointed out, the Chinese possessed practically all the necessaries and luxuries of life, with the exception chiefly of silver and the base metals.[4] In 1786 the Lancashire cotton industry made its first venture into the China market, but the hand-woven cotton goods of Manchester were no more successful than the woollens of Norwich and Halifax in competing with the native-manufactured silks and cottons. Raw cotton, however, was

[1] Dupleix wrote: "Il est assez difficile de pénétrer l'intention de celui qui avait persuadé la Compagnie d'établir un comptoir a Canton, royaume de Chine. Cette entreprise, qui a beaucoup coûté, n'a pu réussir; nous ne sommes pas les premiers qui l'ayons tentée. Les Anglais et Hollandais n'ont rien oublié pour y réussir; ils ont été enfin persuadés de l'impossibilité." (*Société de l'Histoire de l'Inde Française*, i, 106.)

[2] *Anderson, op. cit.*, App. VIII; *Parl. Hist.*, xxviii, 290.

[3] Morse, *Chronicles of the East India Company trading to China*, ii, *passim*.

[4] *Société de l'Histoire de l'Inde Française*, i, 106. Whereas only 50 tons of lead were exported from England to Bengal in 1787, and an equal quantity to Bombay, 1,830 tons were sent to China (Bengal Public Letter from Court, 22 Dec. 1786).

heavily imported from Bombay, and we have evidence from both English and French sources that the profits of this trade were at least 70 per cent.[1] In 1789, for example, 90,000 bales were sent to Canton where they were worth 91 lakhs.[2] Pepper and opium were also desired by the Chinese;[3] opium was sent direct from Bengal, whilst pepper could be bought on the island of Sumatra in exchange for Bengal opium, Coromandel piece-goods and Bombay raw cotton, and could then be conveyed in the Company's ships to China.

The East India Company, therefore, was still experiencing difficulty in providing silver for its China Investment, because the demand at Canton for the products of Indian and English manufacture did not increase in proportion to the English demand for tea, which, to the regret of many people with old-fashioned tastes, was steadily superseding beer as the popular beverage. Some people in England considered that the extension of the tea trade ought not to be encouraged indefinitely, unless the demand for British manufactured goods increased in proportion to the demand for silver.[4] On the other hand, it was pointed out, the silver that was exported from England was itself purchased with English manufactures. But the Company had succeeded in increasing the value of the goods which it exported from England to India and China from about £400,000 a year in the early 'eighties to about £800,000 a year in the early 'nineties,[5] but even this figure compares very unfavourably with that of £4,660,000—the average annual value of the India and China Investment. To conciliate the manufacturing classes at home, the Company anxiously seized every opportunity of introducing English manufactures into China and even hoped that they might percolate into southern China from

[1] M. Blancard stated that the cotton which he bought at Bombay in 1787 sold at Canton at a profit of from 90 to 100 per cent., and that in the same year 38 large English ships carried 100,000 bales which fetched the same price as his (*op. cit.*, p. xlix, p. 162).

[2] *Calcutta Gazette*, 5 Nov. 1789.

[3] Bengal manufactured about 3,500 chests of opium a year at this time. The Dutch purchased about 1,000 chests; 1,000 or so were sold to the Malays, and about 1,200 sent to China (Bengal Public Letter from Court, 27 March 1787). In 1785 the Bengal opium sold for about 20 lakhs (*Parl. Hist.*, xxvi, 163). Whilst on the one hand Colonel Watson informed the Bengal Government in November 1785 that the Chinese people in the southern provinces were undoubtedly increasing their consumption of opium and required an annual supply of 1,500 or 2,000 chests, on the other hand, Mr. Peach, one of the Company's supercargoes at Canton, declared in July 1785 that the sale of opium in China was very uncertain (Bengal Public Letter from Court, 27 March 1787). In 1787 the Directors reiterated the opinion they had expressed in July 1782, that the Company could not properly engage directly in an illicit opium traffic, which the Chinese Government had prohibited. They hoped that the difficulty of supplying their treasury at Canton could nevertheless be overcome by increasing their opium sales in the eastern archipelago, in return for Spanish dollars, or tin and pepper, which the Chinese required (*Ibid.*).

[4] *Parl. Hist.*, xxvi, 169.

[5] *Ibid.*, xxx, 503.

Tibet; but the Company found it much more profitable to export bullion. It is true that Bengal opium was to some extent beginning to take the place of silver in spite of the fact that its importation for smoking purposes (not for medicinal use), though winked at by the Chinese officials at Canton, was prohibited by the Emperor; and it is also true that China tea was being bought with the money realized from the sale of tin and pepper, which, in turn, were purchased in the eastern islands and at Penang with opium from Bengal, Coromandel piece-goods and raw cotton from Bombay. But large consignments of silver had still to be sent to China from England, and Bengal too continued to be drained of its silver, Cornwallis declaring that the Province could not, "without ruin, continue the exportation of its specie."[1] Dundas fully agreed with him. "We understand each other so well on the importance of supplying China through the medium of commerce, either of British or Indian manufactures or produce," he wrote on 8 August 1789, "it is unnecessary for me to say more on that subject. It would be madness to send specie from Bengal for that purpose. Better to send bullion from England, but I trust to see the day when neither will be necessary."[2] During the three years 1786 to 1788 the Company exported almost twice as much silver as the rest of the European countries put together; and the total bullion exported from England to the East increased from an annual average of about £110,000 between 1767 and 1777 to over £600,000 a year between 1784 and 1790, although the amount dropped between 1790 and 1793 to an annual average of about £460,000.[3] The Directors did not "scruple to affirm that the most lucrative and beneficial mode of carrying on the trade with China from Europe is by the export of bullion; yet the Company have anxiously seized every opportunity of introducing British manufactures and produce into China, notwithstanding they could have derived superior advantages from a different conduct."[4] One unfortunate result of the situation was that since the cargoes of the homeward-bound ships were greatly in excess of the cargoes of outward-bound ships, ships frequently had to sail in ballast from Madras or Calcutta to Canton.[5] A more fortunate consequence of the Company's anxiety to increase its export of goods to China

[1] Bengal Public Cons. (*Straits Settlements*), 13 Dec. 1786. Cornwallis, it may be noted, had a low opinion of the Company's servants at Canton. On 14 Aug. 1787 he wrote to Dundas: "We have been unfortunate in our China remittances, which after all I take to be perfectly useless, as the produce of every article that goes from hence to the Chinese market, must be lodged in the hands of our supercargoes; it can go nowhere else. I have not been able to make out anything against those gentlemen, although I have little doubt that they attend much more to their own interest than that of the Company" (Melville Papers).

[2] Melville Papers.

[3] *Anderson, op. cit.*, App. XII; *Parl. Hist.*, xxx, 674, 699.

[4] *Parl. Hist.*, xxx, 699.

[5] Bengal Public Cons., 23 July 1788.

and to diminish its export of silver, was the foundation of a settlement at Penang; and, with the same object of facilitating and increasing the purchase of Malay tin and spices, especially pepper, an attempt was made in 1785 to establish a settlement at Achin, on the island of Sumatra.[1]

One of Cornwallis's aims in concluding a commercial treaty with Oudh was to encourage the importation of raw cotton into Bengal through the Vizier's territories, from the Deccan and other parts of India. Raw cotton might then be exported from Calcutta to Canton and the supercargoes there be furnished with additional funds for purchasing the China Investment. The chief obstacle to the development of such a trade was the high price of cotton exported from Bengal: it could not compete with supplies from Bombay. An expansion of trade with Oudh would also stimulate the export of Bengal piece-goods and Bengal sugar, in which commodities the returns to the Deccan and other States would be made. "Unless cotton can become an article of export from hence," wrote Cornwallis in March 1789, "I cannot see how it is possible for Bengal, through the medium of commerce, or by any other means but by the export of silver, to make a larger remittance to China than the value of the opium that is either sent thither or to the eastern seas." [2]

The other difficulty experienced in pursuing the trade with China was of a political character. European merchants were

[1] The story of the attempt to form a settlement at Achin may be briefly told. In 1781 the Directors instructed the Government of Bengal to endeavour to negotiate a commercial treaty with the King of Achin; on 2 Sept. 1782 therefore the Supreme Council empowered Henry Botham, a member of the Council of Benculen, to call at Achin on his way from Calcutta to Benculen, and carry on the negotiations. The King and his principal minister, though they refused to grant a piece of land and to permit a fort to be built, were very willing to receive a Resident to represent the Company. Accordingly, Joseph Yorke Kinloch was appointed Resident, but various circumstances prevented his departure at that time. In 1785, however, he was sent to Achin, not as Resident, but to reopen negotiations for a commercial treaty. The Company desired a site for a Factory, exemption from payment of customs duties on imports and exports, the exclusion of other nations from these privileges, especially in time of war, and protection to British ships in peril. It was their intention to make Achin the centre of the opium trade. (Bengal Public Cons., 28 Jan. 1785.)

Kinloch proceeded to Achin in March 1785, but his negotiation proved fruitless. The prime minister, who was more powerful than the King, refused to consider the idea of an unlimited free trade, since the revenue would suffer too severely; nor would he grant a piece of land for a Factory. Kinloch believed that neither the King nor his minister was sufficiently powerful to enforce the terms of a treaty. "The people, divided under a number of petty chieftains and forming a kind of feudal aristocracy, watch with a jealous eye the attempts of Europeans to settle amongst them." On 5 Dec. 1785 the Supreme Council ordered the office of Resident at Achin to be abolished and Kinloch to be recalled (*Ibid.*, 16 Nov.; 5 Dec. 1785). In another letter, Kinloch suggested that a settlement might be formed elsewhere on the island of Sumatra. "Achin," he said, "is not the place to settle in" (*Ibid.*, 12 June 1786).

[2] Melville Papers.

often oppressively treated by the Emperor's officials at Canton, and the same evils which Dupleix had so graphically described in 1727 existed sixty years later. "Tyrannisés par les mandarins, haïs du peuple, trompés par les marchands et interprètes, l'on est encore jour et nuit exposé a la rapine d'une quantité innombrable de voleurs, dont ce pays est rempli, desquels l'on ne peut se garantir que par une caution difficile a continuer." [1]

As is well known, the British Government in 1787 sent an embassy under Lieutenant-Colonel Cathcart with the object of smoothing away difficulties and establishing more amicable relations. He was instructed to pay particular attention to the following objects: "First; the measures lately taken by Government for drawing the tea trade out of the hands of the other European nations, which have answered the warmest expectations, and doubled, if not trebled, the former legal importation of this article into Great Britain; and secondly, an attention to the prosperity of our territorial possessions in India, which would be promoted by procuring a secure vent for their products and manufactures in the extensive Empire of China, at the same time that the produce of such sales would furnish resources for the Investment to Europe, now requiring no less an annual sum than one million, three hundred thousand pounds.

"Great Britain, however, has long been obliged to pursue this trade under circumstances the most discouraging, hazardous to its agents employed in conducting it, and precarious to the various interests involved in it. At Canton, the only place where His Majesty's subjects have the privilege of a Factory, and to which the East India Company have by a late Regulation restricted the trade from their own settlements, the fair competition of the market is destroyed by associations of the Chinese, our supercargoes are denied open access to the tribunals of the country and the fair execution of its laws, and are kept altogether in a most arbitrary and cruel state of depression incompatible with the very important concerns which are intrusted to them, and such as one hardly supposes could be exercised in any country that pretends to civilisation." [2]

But Lieutenant-Colonel Cathcart never reached Peking; he died at sea, in the Straits of Banka, in June 1788, and it was not until May 1792 that Lord Macartney, who was destined to accomplish nothing, was appointed to succeed him.[3]

[1] Dupleix, "Memoires sur les établissements de la Compagnie et sur sons commerce dans les Indes Orientales" (*Société de l'Histoire de l'Inde Française*, i, 107).

[2] Morse, *op. cit.*, ii, 160.

[3] *Ibid.*, 156, 216.

APPENDIX II

THE BEGINNINGS OF PENANG, 1786–93

1. Conditions of Navigation in the Bay of Bengal

The East India Company's anxiety to establish a settlement to the east of the Bay of Bengal is intelligible when one knows something of conditions of navigation for the old-time sailing ships which lay at the mercy of winds and currents.

Whenever possible, east-bound traders from Europe or India crossed the Bay during the south-west monsoon (May to October), and returned during the north-east monsoon (October to May). Leaving the Coromandel coast usually not later than the beginning of August, they could expect an easy passage to Achin Head at the northern extremity of the island of Sumatra; but the voyage down the Straits of Malacca was apt to be difficult, for the high mountain range that runs the length of the island obstructs the trade winds, and ships were often delayed by calms. The passage from Madras to the Straits took about twenty days, although in October, when the wind often blows strongly into the Straits from the west, ships could sometimes get across in twelve days. When the question of acquiring a port on the eastern side of the Bay was being considered, experienced navigators pointed out the superior advantages of Penang over the more northerly island of Junk Ceylon, which lay too far out of the course taken by ships sailing to China. Under specially favourable conditions a ship could cross from Calcutta to Rangoon or other Burma ports in less than a fortnight, and from Madras to Rangoon in three weeks, though the cyclones which were frequently encountered at the head of the Bay during this season of the year, considerably lengthened the passage. And ships proceeding from Europe to Calcutta, and reaching the Bay of Bengal late in the season, were unable to call at Madras; they had to cross over to the coast of Arakan, from whence they sailed due west for the Hugli River.[1] In 1789 we hear of a vessel bound for Rangoon which left Pondichéry on 23 May and ran into very bad weather; after stopping for three or four days at the Car Nicobar island it continued its voyage, but was blown far to the east of the Rangoon River and wrecked in the dangerous Gulf of Martaban on 26 June.[2] On another occasion a

[1] *Hickey*, II, 112–17.

[2] Bengal Public Cons., 25 Sept. 1789.

sea captain told his employer, a Calcutta merchant, that it would be almost impossible for his ship to fetch Pegu in the height of the south-west monsoon, but he was informed that if he did not choose to make the attempt someone else would be commissioned to do so. Captain Smith therefore left the Hugli on 24 June, but bad weather impeded his progress across the Bay to such an extent that he reached Rangoon only on 28 September.[1]

The passage from Calcutta to the Straits during this monsoon was usually prolonged to about twenty days, because of the difficulty of approaching the Straits from the north.

Ships bound for Europe seldom attempted the passage across the Bay from the Straits during the south-west monsoon; they naturally preferred to wait for the north-east trade winds in November. But if such a voyage could not be avoided during the unfavourable season, ships bound from China to Madras or Bombay, after rounding the northern extremity of Sumatra, had to watch for the wind blowing well from the south to enable them to stand across the Bay and fetch the Coromandel coast on the port tack. The average length of the passage was nearly a month, although in August 1794 two British warships succeeded in making it in sixteen days.

Vessels sailing either from Calcutta or the Burma ports to southern India during the south-west monsoon had to make a wide detour down the Lower Burma and Malay coast and cut across the Bay from Achin Head, although exceptionally strong and fast-sailing ships with copper bottoms could, with difficulty, beat straight across the Bay. A frigate was once known to make the direct passage in ten days, but another frigate that attempted the same feat took almost a month, and tore her sails and rigging to pieces. In the 'seventies six weeks was considered a fair period during this monsoon for a passage from Calcutta to Madras. When Hickey returned home in 1779 his ship left the Hugli on 1 May and reached Madras on 11 June via the northern coast of Sumatra; but another ship that dropped the Calcutta pilot on the same day arrived only on 20 August. "We made the Andaman Islands," he wrote, "during exceeding tempestuous weather, not a day passing without our carrying away jacks, sheets or halliards, splitting sails every hour, and altogether being most uncomfortable."[2]

The passage from Rangoon to Calcutta during this season, though distinctly unpleasant, might possibly take only eight or nine days; from the Straits it took twenty-five or even thirty, because until the closing years of the century an unnecessarily devious route was followed. Comparatively little was known about the eastern side of the Bay, and commanders considered it necessary after emerging from the Straits to start from Achin Head and weather the Nicobars and the Andamans, fearing that if they sailed to leeward of the

[1] *Ibid.*, 1 Feb. 1768. [2] *Hickey*, ii, 189–202.

islands and hugged the Tenasserim coast, they would be unable to fetch to windward of Point Palmyras and would be thrown into a dangerous situation in the bottom of the Bay. But by 1795 the safety of the direct passage along the coast of Lower Burma had been demonstrated, and ships could hope to reach Calcutta from the Straits in about fifteen days.

Homeward-bound China ships, heavily laden with tea and other commodities, made the return passage after Christmas. The voyage from the Straits to Madras took only eight or nine days, and from Calcutta or Rangoon it was equally expeditious.[1]

During the early part of the north-east monsoon season, the Coromandel coast was too dangerous for shipping. All vessels were required to leave the Madras roads not later than 11 October, and from that date until 11 December insurances ceased along the coast from Point Palmyras in the north to Cape Comorin in the south.[2] In his shipping and commercial manual, M. Blancard wrote: "When the north-east monsoon sets in, the Bay storms are more frequent and violent than those which occur at the setting-in of the south-west monsoon, and the sea breaks with great violence on the Coromandel coast. Vessels anchored in the roads on this coast are in imminent peril. They cannot remain there with safety until the monsoon has lost its greatest strength." [3]

At this season few ships attempted to make the passage from Madras either to Bengal, Burma or the Far East. Whatever the destination, it was generally necessary for vessels to hug the Coromandel coast as far north as 17 degrees north latitude, and they had to struggle hard all the way against adverse currents and winds. During the height of the monsoon, from November to January, the voyage from Madras to the Straits would generally take at least five weeks; to Calcutta, from three to four weeks.[4] It took almost a month to get from Calcutta to Penang, progress being impeded by the strong easterly currents that set out of the Straits of Malacca. The distance from Junk Ceylon to Penang was very short, but the passage took many days, owing to the strength of the adverse current from the east.[5]

[1] Cornwallis left Calcutta on 6 Dec. 1790 and arrived at Madras "after a very prosperous voyage" on the 13th, but when Hickey sailed for Madras three weeks later, the voyage, owing to light winds and calms, lasted eighteen days, and another vessel which left Calcutta two days earlier, had not arrived when he did. (*Hickey*, iv, 8.)

[2] *Ibid.*, ii, 203.

[3] *Hickey*, iv, 20. Hickey, indeed, returned to Calcutta in eight days, in Jan. 1791, but his ship was most unexpectedly favoured by a breeze from the south-west. Sailing from Trincomali on 23 Oct. 1792, Commodore Cornwallis reached the Andamans on 5 Nov. after encountering "a great sea" and very strong winds (P.R.O., Admiralty, I, 167. Cornwallis's Despatch of 18 Dec. 1792).

[4] *Blancard*, p. 285 n.

[5] Bengal Public Cons. (Straits Settlements), 28 Sept. 1795; Bengal Public Cons., 2 July 1784.

2. The Foundation of Penang

Both commercial and political reasons induced the Government of Bengal to take possession of Penang in 1786. The island, which commands the northern entrance to the Straits of Malacca, lies on the direct trade route between India and the Far East, and ships proceeding to China often felt the need of a lee harbour in the Bay of Bengal during the long voyage to Canton. It was becoming increasingly necessary to cater for their needs because of the remarkable expansion of the China trade during the second half of the eighteenth century.

The East India Company further desired a commodious windward port situated at a short distance from Madras and Calcutta, for the refreshment and repair of the King's East Indian squadron in time of war, and especially during the north-east monsoon. As we have seen, from November to March, warships could not safely remain on the Coromandel coast, which was destitute of good harbours. Trincomali, it is true, is situated on the west side of the Bay, and was considered to be the finest harbour in that part of the world; but it belonged to the Dutch.[1] The eastern side of the Bay of Bengal, however, was well protected during the north-east monsoon, and Penang had an excellently sheltered harbour facing the mainland, whilst many of the islands forming the Mergui archipelago, too, had good anchoring grounds and were well supplied with teak. So that whilst the west side of the Bay was exceedingly inhospitable to shipping, the east side provided every conceivable advantage. "Coromandel," wrote Captain Forrest, an experienced navigator in these seas, "has no soundings half a degree from it; the other has soundings one degree from it. Coromandel is, comparatively speaking, a clear country; the opposite coast and islands are covered with wood. Coromandel is often parched up with heat; this is always cool. On Coromandel the mouths of rivers on the sea coast are shallow, and an army may march along shore; here they are all deep, and it is impossible to travel along shore even in small parties. Coromandel has often destructive gales; this coast never any. Coromandel is like the cultivated parts of Europe; the opposite coast like the wilds of America, passable only by the natives, impassable by an enemy, so that all offences by land should be avoided, whilst our long naval arms would teach them both to fear and respect us." [2]

Several proposals to settle somewhere on the eastern side of the Bay had been made to the Governments of Madras and Calcutta

[1] "Trincomali," wrote Cornwallis to Dundas (4 Nov. 1788), "must ever be an object of the greatest magnitude. That we should possess it, and that the French should not possess it, is worth purchasing at almost any price" (*Melville Papers*).

[2] Bengal Public Cons., 2 July 1781.

between 1772 and 1786,[1] but none was adopted until in the latter year the King of Keda, one of the petty Malay princes whose mainland territory lay to the north of Penang, offered to cede the island to the East India Company in the hope that they would protect him against his neighbours, the Siamese and the Burmese. During the long and futile wars between Burma (then known as the Kingdom of Ava) and Siam, the Raja of Keda had sided sometimes with one, sometimes with the other, as the necessity of the moment dictated. He was supposed to send an annual tribute to Siam, but since the sack of Ayuthia, the Siamese capital, by the Burmese, in 1760, he had occasionally done homage to the King of Ava, and contrived to preserve a precarious independence by conciliating both powers. In 1785 the preparations of the Ava Government for the forthcoming campaign against Siam were on so impressive a scale that the King of Keda was thoroughly frightened, and, anticipating the complete overthrow of the Siamese, he undertook to supply the Burmans with arms and ammunition. With characteristic duplicity he sent friendly letters both to the Burmese and

[1] In 1772 Hastings received a letter from Captain Light, urging the annexation of Penang as a means of checking the aggressive movements of the Dutch in the East Indies. Light made a further representation about the year 1778, stating that he could probably obtain from the Siamese a grant of the more northerly island of Junk Ceylon. The Governor-General liked the idea, but before the vessels and stores could be made ready, news arrived of a war with France. No troops could then be spared for such an enterprise, and it was abandoned. Hastings, however, was free to pursue his design in 1783 when the war came to an end. He commissioned Captain Forrest to negotiate with the Malay princes for the purchase of a settlement, and in due course Forrest received a letter from the King of Rhio who offered any part of his territory for a Factory site. But he was at war with the Dutch, and made the offer only in order to obtain military assistance from the Company. However, the offer was accepted and in 1784 Hastings ordered a brig to be prepared for Forrest, who was instructed to "endeavour to procure a spot of ground commodiously situated for commercial purposes and as near the personal residence of the King as possible, on which, when you have obtained a grant of it to the English Company, you will erect the British flag." Hastings promised no military assistance: merely general support. "Your first attention," he directed, "should be exerted to induce the King to place the most unreserved confidence in you by showing him that his interest is materially blended with ours, and holding out to him in return for his protection to our commerce the assistance of the English name and their power and influence in all parts of India from which he may derive permanent security to himself and his dominions." After exploring the Mergui archipelago, Forrest hoisted the British flag on St. Matthew Island. He suggested that the Company should also endeavour to obtain a Fort and Factory on the mainland near the mouth of the Kra River, so that an overland trade route to Cochin China and Siam might be opened up. But this proposal was not accepted, and the intention to found a settlement at Rhio was frustrated by the death of the King whilst fighting the Dutch. On 10 April 1784 a certain Captain Scott, who had been trading with the Malays since 1772, wrote to Hastings pointing out the advantages of Penang as a settlement. "Its general advantages are, its central situation, easy and safe access . . . in all seasons, its harbour covered from all winds and capable of defence, its contiguity to a fertile and plentiful country, and itself being in an equable climate, healthy and fertile" (Bengal Public Cons., 15 April, 31 May, 2 July 1784; 10 Feb., 24 Aug. 1785).

the Siamese, but his double-dealing became known, and the Burmese General threatened to exact a bloody revenge.[1]

It was felt that Penang would be a much more desirable acquisition than either of the two possible alternatives, Junk Ceylon or Negrais, the island off the Burma coast, at the mouth of the Bassein river. Unlike Negrais, which the Company had occupied in 1753 and lost in 1759, Penang was sufficiently detached from the war-swept mainland to prevent a surprise attack; and, further, since it was voluntarily ceded to the Company by the King of Keda, there was no reason to suppose that it could give cause for war. Unlike Penang, Junk Ceylon was situated so far to the northward as to endanger the loss of the passage of the Company's China-bound ships which left Madras rather late in the season. Penang, too, was much more healthy than the port of Achin, on Sumatra, and was free from that chronic state of war and anarchy which had baffled every European attempt to settle at Achin.[2]

The King's letter containing the offer was delivered to the Governor-General on 6 February 1786 by Captain Light. In reply, Macpherson thanked the King, intimated that no restrictions on the trade of the new settlement would be imposed, and that a war-ship would be sent to defend the island and the coast of Keda, and declared that he would consider the idea of compensating the King for any loss of revenue which he might sustain. Presents costing over four thousand rupees, and including two brass-barrelled blunderbusses, three brass-mounted guns, a silver salver and a silver coffee-pot, were ordered for him.[3] Captain Light, who, from his knowledge of the Malay language and customs, was considered to be peculiarly well qualified for the service, was deputed to take charge of the island "after ascertaining that no other nation or Power has a just claim."[4] Although the expedition was sent four months before Cornwallis's arrival, he was the real founder of the settlement, for it was left to him to decide whether it should be retained or abandoned; and after reading the Superintendent's early despatches Cornwallis decided to keep it.[5]

Captain Light's instructions required him to make an accurate survey of the harbour and of the island, its resources and climate, to raise crops, grow fruit and vegetables, and rear cattle, sheep, pigs and poultry, so that passing Indiamen might be supplied with these

[1] *Ibid.* (Straits Settlements), 13 Dec. 1786.
[2] *Ibid.*, 2 March 1786.
[3] *Ibid.*, 6 April 1786.
[4] *Ibid*, 2 May 1786.
[5] Cornwallis made this decision on 13 December 1786. Three months later he informed Dundas that he was going to take steps "to examine with more attention than has ever been bestowed by this Government, the neighbouring countries and islands to the eastward. If good harbours for ships of war can be found in that quarter, which I think by no means impossible, it may perhaps become a future consideration whether Bombay and Benkulen are of substantial use to the Company. We know at present they are very expensive" (Melville Papers. Cornwallis to Dundas, 5 March 1787).

of prows may distress a single ship, yet several frigates can so cover each other as to render the attempt of any number of prows unsuccessful. The Dutch, therefore, can have no real necessity for sending line-of-battle ships to defend their settlements or protect their trade against the Malays." [1] It was obvious that these warships would be used to deter traders from the eastern islands from coming to Penang.

We have already seen [2] that the East Indian trade was very profitable not merely because the products of the spice islands fetched high prices in Europe, but also because they provided valuable cargoes for the purchase of the China investment. The almost complete monopoly of the trade in spices which the Dutch enjoyed, gave them a considerable advantage over their English competitors at Canton. They were able to secure almost unlimited supplies of tin and pepper from the Malay Archipelago at prices which they themselves dictated to the native merchants. Tin, which was highly valued by the Chinese, always fetched good prices. In 1779 the King of Rhio, the large island near Singapore, was goaded by Dutch oppression into beginning a considerable trade with the English Company in those commodities which the Dutch were bent on monopolizing. The greater part of the tin and pepper which the English purchased from the King was sent to China to buy the tea investment, and less silver had to be exported from Bengal. The Dutch lost some of their China trade and had to reduce the number of their China ships. They were determined to have their revenge, and the King of Rhio hastily sought the protection of the English Company and offered land for a Factory. The storm of Dutch resentment was not long in breaking over the heads of the King and his nephew the Raja of Selangore, one of the petty rulers on the mainland. For a brief moment, indeed, the Malay princes were able to take the offensive and besieged Malacca, but the arrival of the Dutch Fleet at once transformed the situation, and the besieging armies were put to flight. Six ships of the line then bombarded and captured Selangore, and though the King managed to escape, his palace went up in flames and his territory was handed over to the King of Siak, an ally of the Dutch. The fleet next bombarded Rhio, and the Governor of Malacca compelled the captains of such English merchant vessels as were in the neighbourhood to make a written declaration that they would not supply any Malay prince with stores or provisions.[3]

Rhio was soon reduced. The King fled to Sucadana, a port on the south-west coast of Borneo, and wrote to the Governor-General of Bengal for assistance. Macpherson, who received the letter in

[1] Bengal Public Cons. (Straits Settlements) 25 Jan. 1788.

[2] See Appendix I.

[3] Bengal Public Cons. (Straits Settlements), 2 March 1786; Bengal Public Cons., 10 Feb. 1785; 31 May 1784.

February 1786, was sympathetic, but could promise nothing, because the English had made peace with the Dutch in 1783.[1] Meanwhile the King of Selangore made a final attempt to recover his territories, but was again defeated and forced to make a humiliating peace. The Dutch were graciously pleased to restore his kingdom, and the Preamble to this document, which was dated 29 July 1786, stated that the Dutch Company, "although possessed of ample means to chastise his insolence, have preferred to listen to his proposals, chiefly with the view of preventing effusion of human blood." The Treaty reduced the King to a position of abject dependence on his masters at Batavia.[2]

The fall of Rhio, which had aroused Dutch enmity by asserting its right as a sovereign State to open its ports to all nations, was a serious blow to English trade. It had been the only Malay port to afford a safe and certain rendezvous for English merchants and "Country" vessels from the Moluccas, the Philippines, Borneo and Celebes. It therefore became more than ever necessary for the English to establish a fortified settlement in the vicinity of the Straits, so that the Malay Powers might be encouraged to resume commercial relations and be protected from the vengeance of the Dutch.[3] The English Company, it is true, still possessed a Factory at Benkulen (Fort Marlborough) on the south-west coast of Sumatra, but it had had to struggle hard to maintain its position in the face of Dutch hostility, and in 1786 it was said to be hardly worth the expense of its upkeep.[4]

The English Company's rivalry with the Dutch, and the loss of their cargoes of spices and tin for the China trade, were, therefore, additional incentives to take Penang. They hoped that the new settlement would soon become "the emporium of the eastern commerce, by which the trade of Bengal and the west parts of India will be connected with that of China." [5]

[1] By the terms of the fifth and sixth Articles of the Preliminary Treaty signed at Paris, 3 Sept. 1783, Great Britain agreed to restore Trincomali and all other conquered settlements, whilst the Dutch engaged not to "obstruct the navigation of British subjects in the eastern seas" (*Parl. Hist.*, xxiii, 1159).

[2] This Treaty is typical of the kind of Treaty that the Dutch imposed on the Malay princes. The King and his chieftains were made to "acknowledge in the fullest sense the supremacy of the Company and to consider themselves as their vassals." He and his subjects "will behave on all occasions as dutiful subjects of the Company and of the Government of Malacca." The King bound himself on all occasions to make common cause with the Dutch and to furnish troops and ships whenever called upon. He was not allowed to trade with the English, and no European vessels, except Dutch, were to be permitted to enter the ports of Selangore unless they needed repairs or were in danger of sinking. The King undertook to deliver to the Dutch all the tin produced in or imported into Selangore, at rates fixed by the Dutch. The King's successor was to be elected by the chieftains, but his election was to be confirmed by the Dutch Company, "his Lord." (I.R.D., Calcutta. Misc. Records in the Foreign Department, vol. i.)

[3] Bengal Public Cons. (Straits Settlements), 2 May 1786.

[4] *Ibid.*, 6 April 1786.

[5] *Ibid.*, 2 May 1786.

The acquisition of Prince of Wales' Island may therefore be said to mark the beginning of a serious attempt on the part of the English to destroy the Dutch monopoly of trade in the eastern archipelago: a monopoly which had excited the resentment of European rivals, as well as the hatred and fear of the petty Malay Powers whose trade was arbitrarily regulated from Batavia and Malacca. Dutch mercantile supremacy in the East Indies rested on sea power, and when their sea power was destroyed during the Napoleonic Wars, their empire lay at the mercy of stronger rivals.

4. Penang from 1786 to 1793

In December 1786 Cornwallis decided that the new settlement should be retained, although he knew that it could not be self-supporting during the early years of its existence. Before making this decision he took into consideration not merely the embarrassed state of the Bengal finances at the close of an expensive war, but also the possibility of the Company's being involved in disputes with the Dutch and the "Country Powers" in the neighbourhood of Penang. "It is evident," he declared, "that we have by this establishment excited the jealousy of the Dutch. Mr. Light suggests the probability of our being attacked by them, and states the force he deems necessary for his security in such an event. I do not for my own part think that they will venture a direct attack. But at the same time I agree in opinion with Mr. Light that it is extremely probable that they will instigate the Malays or Peguans to disturb us." [1]

Cornwallis rejected as dangerous the suggestion that the Company, in order to encourage the Malay traders to come to Penang, should grant them passes as a protection against the interference of the Dutch. "I do not admit their right to many exclusive privileges which they now claim in the eastern seas," he wrote, "but in case of their being arrogated, we are called upon, before we authorise the English colours to be hoisted, to consider how we shall guard against their being insulted." [1] On 15 December 1786 Light informed the Governor-General that he had received repeated intelligence of the hostile intentions of the Dutch, and of the likelihood of their inducing the Princes of Palambany, Rhio and Siak to attack Penang.[2]

A rupture between the Company and one or other of the "Country

[1] Bengal Public Cons. (Straits Settlements), 13 Dec. 1786.

[2] *Ibid.*, 22 Jan. 1787; Bengal Public Letter to Court, 19 Feb. 1787. The opinion of the home Government no doubt strengthened Cornwallis's determination to pursue a cautious policy. Dundas wrote to him on 8 Aug. 1789: "I am very much pleased with every account we have received of Prince of Wales's Island, and I am very clear it ought to be cherished both for naval and commercial purposes, but under the present circumstances of the country I will not be easily induced to agree with Captain Light, that it is to be used to rectify the increasing amity between this country and Holland" (Melville Papers).

Powers" seemed only too likely to occur as a result of the British occupation of the island. The King of Siam, when not engaged in war with his ancient rival, the Emperor of Ava, was perpetually contemplating the subjugation of the Malay Princes, and the Raja of Keda frequently had cause to tremble for the security of his throne. If the Siamese conquered Keda, the island itself would be threatened. If Cornwallis entered into a defensive alliance with the King of Keda, he would be disregarding the peremptory instructions of the Court of Directors. If, on the other hand, in the event of war between Keda and Siam, he withheld assistance, Keda would certainly be conquered and Penang itself would be in danger of attack. Captain Light, considering that the Company ought to preserve Keda as a buffer State, went so far as to assure the King that "while the English are here they will assist him if distressed." [1] The Superintendent, however, was ordered to make it clear to the Raja's advisers that the Company's sole object was to defend the island, and that the Raja "must not expect that our Government will enter into or become a party in his disputes with other Malay Princes, nor could our protection be effectually afforded him without involving us in disputes with the Burmers and Siamese, the latter of whom are at present the most powerful, while the former might do great injury to the English trade at Pegu. . . . We therefore direct that, refraining from assisting either party, you endeavour to acquire the respect and secure the goodwill of all." [2]

Seeing that military assistance was not likely to be forthcoming, the King of Keda began to regret the loss of his island. It soon became obvious that his attachment to the Company would be changed into hostility if a defensive alliance were withheld, and Captain Light felt that no reliance could be placed on so shifty a monarch, who would willingly encourage either the Dutch or the Siamese to attack Penang in order to save his own country from conquest.

The King made the further discovery that his calculated generosity would cost him dear. The island was beginning to divert trade from the ports of Keda and to deprive him of revenue. His demand for monetary compensation for the loss of customs duties was not unreasonable, and Light suggested that it should be favourably considered. "The present value of the King's friendship," he wrote on 5 October 1786, "may be fairly estimated at 10,000 Spanish dollars [3] per annum, for although he cannot prevent the trade from coming here, nor can he stop his subjects from coming to settle here (they will come at all hazards), yet he can stop the export of provision, and by letting loose a gang of thieves, greatly distress a young settlement. It is therefore prudent to

[1] Bengal Public Cons. (Straits Settlements), 13 Dec. 1786.
[2] *Ibid.*, 22 Jan. 1787; Bengal Public Letter to Court, 19 Feb. 1787.
[3] The Spanish dollar was worth about five shillings.

keep on good terms with him, until we are in a condition to provide for ourselves ; add, that some regard is due to one who has granted an island that is likely to prove of the greatest utility and advantage to the Honourable Company." [1]

In a subsequent letter, Captain Light pointed out that if the Siamese conquered Keda, the island's provision supplies would be cut off.[2] And he believed that if the King began to nurse a grievance against the English, he might invite either the French, the Dutch, or the Danes, who had often solicited permission to establish a Factory in Keda, to make an alliance with him.[3]

But Light's persuasive and forceful arguments fell on unresponsive ears. Cornwallis remembered his instructions from home and withheld his consent. When, in January 1788, he agreed to pay the King an annual sum not exceeding 10,000 dollars, he declared: " with respect to any conditions of the agreement which you may judge of use to the inhabitants of the island either with respect to supplies of provisions, or to facilitate trade, you will of course attend to them, but you will take care not to insert any stipulation in it of offensive alliance with the King of Keda against the Siamese and Burmahs or any other Power, or any stipulation which declares him under the Company's protection. We have long determined not to adopt measures that may engage the Company in military operations against the eastern Princes . . . but if, without deviating from this rule which we have prescribed for our conduct, you can employ the countenance or influence of the Company for the security of the King of Keda against the Siamese and Burmahs, we have no objection to your doing so." [4]

In 1789 the King, who had as yet received neither promise of military support nor monetary compensation for loss of revenue, made overtures both to the French and the Dutch for better terms than the English would offer. " The Dutch," said Light, " received his letters with great pomp, a cruiser was sent to Keda and two cruisers actually anchored off this harbour. I sent Lieutenant Richardson in the *Hawke* to see what they wanted, but upon his approach they weighed and stood to sea and returned when the *Hawke* came in." [5]

The King's treachery was openly revealed in 1790 when he commissioned a large fleet of Malay pirates to make a night assault on Penang. He promised them 20,000 dollars if they succeeded in destroying the settlement, and to rally to their assistance if they failed. The Company's servants were to be massacred and the other inhabitants enslaved. On the night of 25 November 1790 the pirates arrived outside the harbour, but a disagreement among the leaders caused the attack to be postponed, and the

[1] Bengal Public Cons. (Straits Settlements), 13 Dec. 1786.
[2] *Ibid.*, 6 Feb. 1788.
[3] *Ibid.*, 13 June 1787.
[4] *Ibid.*, 25 Jan. 1788.
[5] *Ibid.*, 21 Aug. 1789.

prows withdrew. The King of Keda issued orders prohibiting his subjects from trading with the English, stopped supplies of provisions, and prepared his war-boats for action. For over two months not a single cargo of rice arrived at Penang, and the islanders were threatened with starvation. Captain Light grew desperate. He wrote on 6 January 1791: "If the King of Keda persists in keeping his rivers shut up I shall be under the necessity of using force and I have determined to wait no longer than the 15th of this month. . . . To-morrow I shall send the cruiser to Keda to inform him that he must either permit supplies to be brought here as usual or a refusal will be considered as a declaration of war." [1]

He had already written to Commodore Cornwallis, the Governor-General's younger brother, who was in command of the small squadron of His Majesty's ships that had been sent to the East Indies in 1789 to survey the islands and coasts of the Bay of Bengal, for assistance.[2] The Commodore was already well acquainted with the local situation, for he had made a survey of the harbour in January and February 1790 and had informed his brother that the island was not suitable as a refitting place for warships.[3] He received Captain Light's letter at the Andamans whilst engaged in survey work, and, setting sail immediately in his flagship the *Crown*, he arrived at Penang on 3 January 1791 after a voyage of nine days.[4]

[1] *Ibid.*, 9 Feb. 1791.

[2] Commodore Cornwallis's squadron consisted of the following ships:—

Name.	*Rate.*	*Guns.*	*Men.*
Crown . . .	Third	64	500
Phœnix . . .	Fifth	36	240
Perseverance . .	Fifth	36	240

In addition there were two sloops, the *Atalanta* and *Ariel*, the former mounting 16 guns and carrying 110 men. The squadron left Portsmouth on 1 Feb. 1789, arrived at Madeira on the 28th, and reached Diamond Harbour, up the Hugh, on 18 Sept. (P.R.O., Admiralty, I, 167, Cornwallis's Despatch dated 10 Nov. 1789; II, 590, Secretary to the Admiralty, to Lord Sydney, No. 303; II, 118, p. 536; I, 167, Cornwallis's Despatches dated 7 Jan., 12 March 1791.)

[3] P.R.O., Admiralty, I, 167, Cornwallis's Despatch, 27 Feb. 1790; Melville Papers, Lord Cornwallis to Dundas, 1 April 1790. Commodore Cornwallis was more favourably impressed with the prospects of the Andamans as a refitting place, and also wrote favourably of the Nicobar Islands, which, said the Governor-General, "are considered as belonging to the Danes, but I cannot conceive that these possessions can ever be of the smallest use to them. Perhaps the present day may not be the most convenient for opening a negotiation of this kind with Denmark, but whenever there is a cordial intercourse between the two countries, I can hardly entertain a doubt of their parting with that nominal and useless, and, I believe I may add, doubtful property for a very slender compensation.

"I do not mean that it would be advisable that we should have much more establishment at the Nicobars than the Danes have; especially if the harbour in the Andaman should be found to answer our purpose completely. But it would be very inconvenient if in any turn of European politics, the Danes should make them over to the French" (to Dundas, 1 April 1790).

[4] P.R.O., Admiralty, I, 167, Commodore Cornwallis's Despatch, 7 Jan. 1791.

His presence did something to restore confidence, but the crisis was merely postponed. The small fort which had been constructed at the beginning of the British occupation was only a makeshift affair, incapable of securing the safety of the settlement. The Governor-General had prudently resolved not to spend considerable sums of money on defence works until the Admiralty at home had decided whether the island would answer the purposes of a naval station and whether it should be extensively utilized by the King's ships.[1] Reinforcements, however, soon arrived from Bengal, but the panic-stricken native cultivators had already begun to abandon their fields, and the Malay traders, also afraid of being massacred by the pirates, had hastily packed up their goods and left the island. The supply of animal food was exhausted, and another could be obtained only with great difficulty and at great expense. The troops which formed the small permanent garrison had been constantly under arms for three months, and the French had been offered a settlement in Keda. "I earnestly request," wrote Captain Light, who was aware of the possibility of the outbreak of another European war, "the Board will as soon as possible give me full power to come to a final settlement with the King of Keda or to make war on him." [2]

At that moment (19 March 1791) Commodore Cornwallis was still at Penang, but, believing that the arrival of reinforcements from Bengal would ensure the safety of the island, he set sail for the Malabar coast early in April and arrived at Tellicherri on the 20th.[3] The pirate fleet continued to adopt a threatening attitude outside the harbour, and Captain Light, having exhausted his patience, twice made an attack and dispersed the enemy with loss (earlier than 19 April). The Supreme Council [4] approved these vigorous measures as essential for the safety of the settlement, but forbade him either to make war on Keda or to conclude a treaty of alliance.[5]

A few weeks later, in May 1791, the King accepted the Company's terms. His vakils had persisted in their demands for the assistance of cruisers and the Bengal army whenever Keda was attacked; but Light skilfully countered by claiming an area of 600 square miles of mainland territory opposite the island. Eventually the King agreed to waive all other claims in return for an annual sum of 6,000 Spanish dollars.[6]

[1] Melville Papers, Cornwallis to Dundas, 18 Dec. 1787.
[2] Bengal Public Cons. (Straits Settlements), 20 April 1791.
[3] P.R.O., Admiralty, I, 167, Cornwallis's Despatches, 12 March, 22 April 1791.
[4] The Governor-General had gone to Madras in December 1790 to take charge of the war against Mysore.
[5] Bengal Public Cons. (Straits Settlements), 15 June 1791; Bengal Public Letter to Court, 10 Aug. 1791.
[6] Bengal Public Letter to Court, 25 Nov. 1791; I.R.D., Calcutta, Home Misc. Records, vol. 199, Light to Cornwallis, 31 May 1791.

Before the English occupation, Penang contained but 58 inhabitants, and the land lay uncultivated. By November 1786 the population had increased to 220,[1] and to over 500 by the end of 1788.[2] Out of nineteen Europeans, fourteen were Englishmen; there were two Americans from Madras, a Swede from Mergui, a Eurasian from Batavia, and a Frenchman from Tranquebar. Of the Europeans, five were writers, whilst there were two merchants, a tavern-keeper, a ship's carpenter, a caulker, a cooper, a planter, a "dealer," a blacksmith, a house-builder, a shopkeeper, a beech-master, a mariner, and a shipbuilder.[3] A second French priest had arrived, but both left in May 1787, one going to Pondichéry, the other to Mergui. "A Portuguese padre would be better than a French, the latter being too great politicians," declared Light.[4] Most of the native settlers came from Keda, the other Malay States, and Siam. In December 1786 Cornwallis ordered the Government of Fort Marlborough to send 150 slaves, "volunteers if possible," to clear the jungle,[5] and he directed the Company's supercargoes at Canton to encourage the Chinese to settle at Penang.[6] During the first ten weeks of the occupation, 21 ships and 5 prows arrived, and 13 departed.[7]

In 1789 a few convicts were sent from Bengal, and, like the American colonies after the Restoration, Fort Marlborough, and Botany Bay, Prince of Wales' Island came to be used as a small penal settlement. As early as June 1787 an enterprising Calcutta resident named Crucifix suggested that Penang might be a convenient dumping-ground for convicts, who, he considered, should be given to him for a term of years, and made to work for his private profit on the land. He asked for a salary, or, alternatively, a grant of land, together with a free outward passage for the convicts, whilst he undertook to pay for the loan of their services and to assist them back at his own expense.[8] His proposal was not accepted, but in January 1789 the Governor-General gave permission to a Mr. Julius Griffith to transport twenty dacoits from Bengal to Penang, and to employ them for his own profit on condition that he paid their return passage, fed and clothed them, treated them reasonably well, and forbore to exact excessive hard labour.[9]

[1] Bengal Public Cons. (Straits Settlements), 22 Jan. 1787.
[2] *Ibid.*, 10 April 1789. [3] *Ibid.*
[4] *Ibid.*, 13 June 1787.
[5] Only 125 slaves arrived, consisting of 58 men, 50 women, 7 boys and 10 girls (*Ibid.*, 27 July 1787). Light found them "very lazy: the women do by far the most labour" (*Ibid.*, 17 Sept. 1787). "A register is kept of all slaves bought and sold here," he wrote on 7 Oct. 1787 (*Ibid.*, 25 Jan. 1788).
[6] *Ibid.*, 22 Jan. 1787.
[7] *Ibid.*, 13 Dec. 1786. The largest ship was of 400 tons burden. Most were on their way from Europe to China. Several came from Malacca, Batavia and Keda with cargoes of tin, pepper, etc.
[8] Bengal Public Cons., 9 July 1787.
[9] *Ibid.* (Straits Settlements), 30 Jan. 1789.

Though a considerable area of land had been cleared by the end of 1788, the scarcity of labour prevented the settlement from becoming self-supporting, and for some years it was dependent on Keda for food supplies. Nor did its trade expand so rapidly as Cornwallis desired. He wrote on 23 December 1789: "Although the Company have been in possession of Prince of Wales' Island for three years, it has not been attended with any public benefit to their trade, or any other public advantage, but the charge has been heavy." [1] He was unable to furnish all the requirements of the island, and whereas on one occasion Light asked for 40,000 Spanish dollars and 300 chests of opium, he received only half that sum and 50 chests.[2]

Cornwallis suggested that the Company might reimburse itself for the unavoidable but heavy expense incurred by a new settlement, by imposing a general import duty at Penang. Light, however, declared that such a tax would discourage trade. "As this island produces nothing of a commercial nature in itself, but every article fit for the China market to be procured at it is brought from the surrounding countries by the Malays, whose chief inducement to visit it has been the great freedom of trade, that inducement ceasing, the imports would become too inconsiderable to defray the expense of collecting duties on them." "It cannot be expected," he added, "that a revenue can be raised at so early a period equal to the charges of Government. A little more time, when the trade is extended and become established by proper support and encouragement, may show the Honourable Company the advantages resulting from this island." [3]

[1] Bengal Public Cons., 23 Dec. 1789. [2] *Ibid.*, 22 Jan. 1787.

[3] Bengal Public Cons. (Straits Settlements), 25 Aug. 1788. Light referred to the commercial prospects of Penang in the following letter, written at the end of 1789: "The sale of opium is become of importance, and at a time when the eastern prows, from various impediments, cannot come to purchase, this year were sold 300 chests. . . . Therefore the possessing this port must have added an increase of purchasers of this commodity. . . . The Malay princes have all an arbitrary mode of dealing both with their own subjects and strangers. They purchase the produce of their country at very low prices, and sell the most valuable and necessary foreign articles at a high advance. The spirit of commerce is destroyed, no encouragement is given to industrious adventurers. The traders in general are desperate gamblers, who, when they have made a voyage, on their return frequently find themselves more involved than when they set out, and in the end themselves and families become slaves to the King or his merchant; to avoid this, they sometimes take refuge with another Prince. The vicinity of Penang enables the Malays to make more profitable voyages, without impositions; for every kind of production they are certain of meeting with a purchaser, let the quantity be more or less; they likewise can come in small prows, and are not necessitated to borrow money for their fitting out. . . . On the east side of Sumatra and on the coast of Malay are many rivers, from whence formerly issued many valuable articles of commerce. These have, through a variety of accidents, been long neglected; the present inhabitants have not known where to carry the produce of their country; the charges of Malacca were too great; the monopolising spirit of the Malay Princes, and their

Two years after the settlement of the dispute with the King of Keda, the war of the French Revolution broke out. An opportunity of testing the value of Penang as a naval station arrived, and the island entered upon the second phase of its history.

arbitrary prices, offered no hope of gain to the adventurer, the husbandman no motive for industry. . . . They have now brought their goods to Penang, and find the produce of their land is no longer useless. . . . The east coast of Sumatra is rich in mines of gold and tin; the country produces rice, pepper, brimstone, dammar, rattan canes, oil, wax, ivory, agate, dragon's-blood, and cassia; the interior parts, cattle. It will be easy, by supplying the wants of these people, to cultivate their friendship, by which means a communication may be formed with the settlements on the west coast; a considerable advantage is likely to ensue to the Company from acquiring an intercourse with the east coast and interior parts of Sumatra, by increasing the quantity of pepper for the Europe markets, and by reducing the expenses and charges attending the purchase of this valuable production; and as the conjecture is not improbable, the gradual change which is forming in the mode of cultivating the West India islands, the article sugar should become too expensive for the planters, or the great price of labour induce them to cultivate some other branch of commerce, the island Sumatra, or the coast of Malay, will yield sugar equal in quality and quantity and cheapness, with Batavia; the means of effecting, attended with no great difficulty. Another inducement to extend and encourage the commerce of Penang, instead of drawing specie from Bengal, it will be the means of conveying bullion to this Presidency, and as Government sometimes experience difficulties, and always a loss, in making remittances to Madras and Bombay, from the proceeds of opium, iron, steel, and broad cloth, gold may be collected and sent to either of those Presidencies without suffering any loss" (*Ibid.*, 14 Jan. 1790).

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Printed in Great Britain by Butler & Tanner Ltd., Frome and London